

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

IN RE: NATIONAL PRESCRIPTION)
OPIATE LITIGATION)
) MDL No. 2804
THIS DOCUMENT RELATES TO:) Case No. 17-md-2804
)
Track Three Cases)

VIDEOTAPED DEPOSITION OF DEMETRA ASHLEY
Conducted via Zoom
Chicago, Illinois
Thursday, March 11th, 2021

REPORTED BY: GREG S. WEILAND, CSR, RMR, CRR
JOB NO.: 4486738

March 11th, 2021

8:11 a.m. Central Standard Time

Videotaped Deposition of DEMETRA ASHLEY,
conducted via Zoom, taken before GREG S. WEILAND,
CSR, RMR, CRR, pursuant to the Federal Rules of
Civil Procedure for the United States District Court
pertaining to the taking of depositions, in the City
of Chicago, Cook County, Illinois, commencing at
8:11 o'clock a.m. Central Standard Time, on the
11th day of March, 2021.

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1 PRESENT (CONTINUED):

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21 MR. KURT HENSHELL, The Videographer (via Zoom)

22 MR. JIM HOY (via Zoom)

23 MR. WILLIAM AUBEL (via Zoom)

24 MR. JONATHAN JAFFE (via Zoom)

25

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Document titled 012 - Holiday CVS, L.L.C.,
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1 THE VIDEOGRAPHER: Okay. We're on the
2 record. Today's date is March 11, 2021. The
3 time is 8:11.

4 This is the matter of the National
5 Prescription Opiate Litigation. Appearances
6 will be noted on the stenographic record. The
7 witness is located in Chicago.

8 Court reporter, please swear in the
9 witness.

10 THE STENOGRAPHER: Good morning,
11 Counselors. My name is Greg Weiland. I'm a
12 licensed Certified Shorthand Reporter working
13 in association with Veritext Legal Solutions.

14 Due to the severity of COVID-19 and
15 following the practice of social distancing, I
16 will not be in the same room with the witness.
17 Instead, I will swear the witness and will
18 stenographically record this deposition
19 remotely via Zoom.

20 Do all parties stipulate to the validity
21 of the remote swearing as if it had been
22 conducted following Rule 30 of the Federal
23 Rules of Civil Procedure and the state's rules
24 where this action is pending?

25 MS. SWIFT: Yes, for defendants.

1 MR. WEINBERGER: On behalf of the
2 plaintiffs, yes.

3 (Witness sworn.)

4 DEMETRA ASHLEY

5 after being first duly sworn, testified as follows:

6 EXAMINATION

7 BY MS. SWIFT:

8 Q. Good morning, Ms. Ashley. My name is Kate
9 Swift, and I represent Walgreens.

10 Thank you for being here with us today.

11 My first question for you is do you live
12 and work in Chicago?

13 A. Yes.

14 Q. If I understand your resumé correctly, you
15 worked at the Drug Enforcement Administration for
16 more than 30 years; is that right?

17 A. Yes.

18 Q. Did you work as a DEA diversion
19 investigator in both Detroit and Chicago for a
20 number of years?

21 A. Yes.

22 Q. Were you also head of the Chicago field
23 division for the DEA for a number of years?

24 A. For diversion, yes.

25 Q. In that role as head of DEA's Chicago

1 Field Division Office for Diversion, were you in
2 charge of diversion control for five states?

3 A. Yes.

4 Q. Is that what you were doing from around
5 2007 until 2015?

6 A. Yes.

7 Q. I understand you also worked at DEA
8 headquarters for a number of years in different
9 roles; is that right?

10 A. Yes.

11 Q. Were you the acting assistant
12 administrator of DEA's Office of Diversion Control
13 for a period of time?

14 A. Yes.

15 Q. Does that mean you were the second or
16 third highest-level executive in the Office of
17 Diversion Control?

18 MR. WEINBERGER: Objection, form.

19 BY MS. SWIFT:

20 Q. You can answer.

21 A. Oh. So there were -- at my level, there
22 were seven of us. So three levels down, but there
23 were seven us at my same level, yeah.

24 Q. That was a senior executive role?

25 A. Senior executive, correct.

1 Q. When did you leave the DEA?

2 A. March of 2018.

3 Q. Since leaving the DEA in 2018, have you
4 had your own consulting business?

5 A. Yes.

6 Q. Now, I understand you gave another
7 deposition in this litigation in March of 2019; is
8 that correct?

9 A. Yes.

10 Q. You testified that you had done some
11 consulting work for Purdue Pharma after leaving the
12 DEA.

13 When was the last time you did any work
14 for Purdue?

15 A. I think I need to make a correction. I
16 didn't actually do any work. I did sign a contract,
17 but I signed the contract in -- I don't even
18 remember -- November of 2018 and terminated in March
19 of 2019.

20 Q. So is it fair to say you never did any
21 actual consulting work for Purdue?

22 A. Correct.

23 MR. WEINBERGER: Objection, form.

24 BY MS. SWIFT:

25 Q. You can answer.

1 A. Correct.

2 Q. Have you ever done any consulting work for
3 Walgreens?

4 A. No.

5 Q. Have you ever done any consulting work for
6 CVS?

7 A. No.

8 Q. Have you ever done any consulting work for
9 Walmart, Rite Aid, or Giant Eagle Pharmacy?

10 A. No.

11 Q. Have you ever done any consulting work for
12 any chain pharmacy?

13 A. No.

14 Q. I'd like to ask you some questions about
15 your understanding and knowledge about DEA's roles
16 and responsibilities.

17 Is it correct to say that the DEA
18 regulates medications classified as controlled
19 substances?

20 A. Yes.

21 MR. WEINBERGER: Objection. I just want
22 to be clear that the witness is here testifying
23 in her personal recollection. She's not a DEA
24 witness, so you may just want to rephrase that
25 question.

1 MS. SWIFT: Before I do, Greg, I just
2 noticed that I'm not getting the realtime. Let
3 me refresh and see if it comes back.

4 MR. WEINBERGER: Yeah, neither am I.

5 MS. SWIFT: I've got it. I just hit
6 refresh and it came back. Maybe that will
7 help, Pete.

8 MR. WEINBERGER: Go ahead.

9 BY MS. SWIFT:

10 Q. Ms. Ashley, in your experience, with more
11 than 30 years at the DEA, is it your understanding
12 the DEA regulates medications that are classified as
13 controlled substances?

14 A. Yes.

15 Q. Does that include prescription opioid
16 medications such as oxycodone?

17 A. Yes.

18 Q. Does the DEA, in your experience, register
19 and oversee doctors and other prescribers who write
20 prescriptions for opioid medications?

21 A. Yes.

22 MR. WEINBERGER: Objection as to
23 "oversee."

24 BY MS. SWIFT:

25 Q. Can a doctor write a prescription for an

1 opioid medication without a DEA registration?

2 A. No.

3 Q. Do prescribers have to renew their DEA
4 registration on a regular basis?

5 A. Yes.

6 Q. Do you recall how often prescribers have
7 to renew their DEA registration?

8 A. Every three years.

9 Q. Can the DEA revoke a doctor's registration
10 to prescribe opioids if DEA determines that that
11 prescriber's doing so is not in the public interest?

12 A. Yes.

13 Q. Can the DEA investigate and recommend
14 criminal charges against doctors who write
15 illegitimate prescriptions for opioids?

16 A. Yes.

17 Q. All right. I'd like you to take a look at
18 the envelope that says Exhibit Q on the front of it,
19 please. You can go ahead and open that one.

20 MS. SWIFT: This will be Exhibit 1 to
21 Ms. Ashley's deposition.

22 (Defendant Exhibit 1 was marked
23 for identification.)

24 BY MS. SWIFT:

25 Q. Do you have that in front of you,

1 Ms. Ashley?

2 A. Yes.

3 Q. This is a PowerPoint presentation that you
4 gave when you were the associate deputy assistant
5 administrator for DEA, correct?

6 A. Yes.

7 Q. I'll represent to you that we can tell
8 from the metadata, it was -- that the file is from
9 2016.

10 Do you recall that this is a presentation
11 you gave in 2016 when you were a senior executive at
12 the DEA?

13 A. Do I recall it? No, but --

14 Q. Does that sound right to you based on --

15 A. Yeah, it sounds right.

16 Q. Okay. Got it.

17 Right now I just have one question for you
18 about this document, and it's -- if you'll take a
19 look at Page 12. There are page numbers at the
20 bottom right-hand corner of each slide.

21 A. 12, yeah.

22 Q. You said in your presentation in 2016,
23 "Prescription drug abuse is driven by indiscriminate
24 prescribing, criminal activity."

25 Do you agree with that statement today?

1 A. Say that again. It says it where?

2 Oh, what you just read, "Prescription drug
3 abuse is driven by indiscriminate prescribing" --
4 well, yeah, it's two separate things. But, yes, I
5 do, yes.

6 Q. Do you agree that indiscriminate
7 prescribing drove prescription drug abuse?

8 MR. WEINBERGER: Objection.

9 THE WITNESS: That's part of it. I agree
10 that it's part of it.

11 BY MS. SWIFT:

12 Q. Do you agree that criminal activity is
13 also part of what drove prescription drug abuse?

14 MR. WEINBERGER: Objection.

15 THE WITNESS: Yes.

16 BY MS. SWIFT:

17 Q. You can set that one aside for now, and
18 I'll ask you to open the envelope that says
19 Exhibit S.

20 MS. SWIFT: This will be Exhibit 2 to
21 Ms. Ashley's deposition.

22 (Defendant Exhibit 2 was marked
23 for identification.)

24 BY MS. SWIFT:

25 Q. Ms. Ashley, do you recognize what I've

1 marked as Exhibit 2 to your deposition?

2 A. Do I recognize it? Yes.

3 Q. This is another PowerPoint presentation.
4 And you can see on the first slide, it says that it
5 is from a presentation in June of 2013 called
6 "Prescription Drug Awareness Conference" in Chicago,
7 Illinois.

8 Correct?

9 A. Yes.

10 Q. This is a presentation that you gave; is
11 it not?

12 A. I'm not a hundred percent certain.

13 Q. Did you give presentations like this in
14 the 2013 time frame?

15 A. Yes, but because this says "Operations
16 Division," I don't think I gave this one.

17 Q. You were in charge of DEA's Chicago field
18 division at the time in 2013; is that right?

19 A. Yes.

20 MR. WEINBERGER: Objection.

21 BY MS. SWIFT:

22 Q. The Page 1 of this presentation that I
23 marked as Exhibit 2, the title says "Combating
24 Pharmaceutical Diversion: Targeting 'Rogue Pain
25 Clinics' and 'Pill Mills.' "

1 What is a rogue pain clinic?

2 A. It's a clinic where they are likely
3 operating, we used to call them, pill mills, where
4 there's, you know, lines out the door and physicians
5 are writing prescriptions, you know, for no
6 legitimate medical need, like, they're not --
7 they're not within compliance of the Controlled
8 Substances Act.

9 Q. Is a pill mill the same thing as a rogue
10 pain clinic, in your understanding?

11 A. Pretty much, yeah.

12 Q. At rogue pain clinics and pill mills, is
13 it your understanding, from your experience at the
14 DEA, that doctors were both writing and dispensing
15 pain medications without a legitimate medical
16 purpose?

17 A. Yes, on some occasions, yes.

18 Q. On Page 2 of the slide deck that I marked
19 as Exhibit 2, it has the heading Outline.

20 Do you see that?

21 A. Yes.

22 Q. The second bullet point says, "Pill Mills
23 on the Move ... Everywhere."

24 Based on your experience at DEA, is it
25 true that pill mills were a problem all over the

1 country in this time frame?

2 A. Yeah, I think so, yes.

3 Q. Was that true in 2011, 2012, 2013, that
4 pill mills were a problem all over the country?

5 A. I believe so, yes.

6 Q. You already testified that rogue pain
7 clinics are basically the same thing as pill mills.

8 Is it fair to say that rogue pain clinics
9 were also a problem all over the country in the
10 2011, 2012, 2013 time frame?

11 A. I believe so.

12 Q. Would you agree that rogue pain clinics
13 and pill mills were a big part of the prescription
14 opioid problem in the 2011, 2012, 2013 time frame?

15 MR. WEINBERGER: Objection.

16 THE WITNESS: Does that mean answer?

17 BY MS. SWIFT:

18 Q. You can answer.

19 A. Yes. I believe it was part of the
20 problem, yes.

21 Q. This -- this slide in Exhibit 2 is
22 followed by a number of pages with pictures of pill
23 mills and rogue pain clinics.

24 Would you agree with that?

25 A. It is, yes.

1 Q. And those pictures show what I think you
2 were describing a moment ago, people lined up
3 outside the door.

4 Is it your understanding that these are
5 pictures of people lined up to obtain prescription
6 opioids from doctors without a legitimate medical
7 purpose?

8 A. Yes.

9 Q. Then if you turn to Page 39 of Exhibit 2,
10 39 has a heading that says, "What Authorities are
11 Doing to Target the Problem."

12 Do you see that?

13 A. Yes.

14 Q. Then on Slide 40, there's a map of the
15 United States, and the heading of the slide says,
16 "Status of State Prescription Drug Monitoring
17 Programs."

18 Do you see that?

19 A. Yes.

20 Q. What are Prescription Drug Monitoring
21 Programs, based on your experience at DEA?

22 A. Those are monitoring programs set up by
23 each state to monitor the prescriptions, the
24 controlled substance prescriptions, the transactions
25 from pharmacies.

1 Q. Do pharmacies typically have to report the
2 controlled substance prescriptions that they fill to
3 their state prescription monitoring program?

4 A. They have recently. I mean, well, it's
5 been a number of years now, but yes.

6 Q. How do state prescription monitoring
7 programs help prevent diversion, in your experience?

8 A. They have -- it's a monitoring, so they
9 have state employees, investigators, and, you know,
10 different sections in state organizations that sort
11 of take a look at the prescription drug
12 transactions, and it helps them to address if they
13 see an issue bubbling up.

14 Q. Would you agree that State Prescription
15 Drug Monitoring Programs have helped to reduce
16 illegitimate prescriptions around the country?

17 A. Has it helped? I think they've been
18 effective.

19 Q. Would you agree that State Prescription
20 Drug Monitoring Programs have helped prevent
21 diversion of prescription opioids?

22 A. Somewhat. Not totally.

23 Q. Would you agree that DEA and local law
24 enforcement have greater access to the data that is
25 housed in prescription monitoring program databases,

1 greater access than doctors and pharmacists have?

2 MR. WEINBERGER: Objection.

3 THE WITNESS: Oh, I'm sorry.

4 MR. WEINBERGER: Withdraw the objection.

5 THE WITNESS: No, they don't.

6 BY MS. SWIFT:

7 Q. Do you understand that a pharmacist can
8 only look up information for a particular patient in
9 a Prescription Drug Monitoring Program in the course
10 of filling that patient's prescription?

11 MR. WEINBERGER: Objection, form.

12 THE WITNESS: No, that's not my
13 understanding.

14 BY MS. SWIFT:

15 Q. Okay. Do you know one way or the other?

16 MR. WEINBERGER: Objection, form.

17 THE WITNESS: I have an understanding,
18 yeah, I think, yes.

19 BY MS. SWIFT:

20 Q. What is your understanding?

21 A. They can also look up the physician, the
22 physicians prescribing --

23 Q. Do you --

24 A. -- and not just the patient.

25 Q. Do you have an understanding that a

1 pharmacist filling a prescription cannot look up a
2 physician independent of a particular prescription?

3 A. Yes.

4 Q. If you'll turn to Page 46 of Exhibit 2,
5 this is still in the section of this PowerPoint on
6 what authorities are doing to target the problem of
7 rogue pain clinics and pill mills, Slide 46 has the
8 heading "Targeting the Pill Mills: Sources of
9 Complaints."

10 Do you see that?

11 A. Yeah, I'm sorry. I turned it to the wrong
12 page.

13 Okay. I have it now, yes.

14 Q. Do you see the heading "Targeting the Pill
15 Mills: Sources of Complaints"?

16 A. Yes.

17 Q. Pharmacy employees is at the top of the
18 list and highlighted.

19 Do you see that?

20 A. Yes.

21 Q. Do you agree, based on your 30-plus years
22 at DEA, that pharmacy employees have been an
23 important source of cooperation and assistance in
24 investigations of pill mills over the years?

25 A. I believe they have been an important

1 source, yes.

2 Q. Is that true all over the country, that
3 pharmacy employees are a key source of complaints
4 about bad doctors and pill mills?

5 A. I can say they're a valuable source. Are
6 they a key source? I don't know how often that is.
7 I mean, no.

8 Q. Would you agree, based on your experience
9 at DEA, that DEA has investigated hundreds and
10 hundreds of doctors for improper prescribing of
11 prescription opioids?

12 A. Yes.

13 Q. And now I'd like you to open the envelope
14 that is marked KK.

15 MS. SWIFT: It will be Exhibit 3 to
16 Ms. Ashley's deposition.

17 (Defendant Exhibit 3 was marked
18 for identification.)

19 BY MS. SWIFT:

20 Q. Ms. Ashley, Exhibit 3 is a 272-page list
21 that I printed out from the DEA's website. You can
22 see at the top of the first page it says, "Cases
23 Against Doctors."

24 Do you see that?

25 A. Yes.

1 Q. And beneath that it says, "This is a
2 listing of investigations of physician registrants
3 in which DEA was involved that resulted in the
4 arrest and prosecution of the registrant."

5 Do you see that?

6 A. Yes.

7 Q. If you flip through it, you can see that
8 the doctors listed in this Exhibit 3 are from all
9 over the country.

10 Do you see that?

11 A. Yes.

12 Q. And -- oh, this one isn't numbered.
13 Shoot. I'll show it to you on the screen. Let's
14 see.

15 Do you have access to the Exhibit Share,
16 or do I need to share this with you on the Zoom?

17 A. I have access to it, but I -- I'll
18 probably screw it up.

19 Q. You haven't pulled it up. That's okay.

20 And, actually, the version on the
21 Exhibit Share is incorrect. Oh, I marked the wrong
22 exhibit. Hold on one moment. I marked Exhibit K
23 instead of Exhibit KK.

24 MS. SWIFT: So then, for the record,

25 Exhibit KK is going to be Exhibit 4. My

1 apologies.

2 (Defendant Exhibit 4 was marked
3 for identification.)

4 BY MS. SWIFT:

5 Q. Let me see if I can show this to you on
6 the screen, Ms. Ashley.

7 All right. Can you see that on the
8 screen?

9 A. Yes.

10 Q. I'm going to go to, if I can, Page 24.

11 And do you see on Page 24, there's an Ohio
12 doctor referenced, Dr. Broadnax?

13 A. Yes.

14 Q. It says that Dr. Broadnax -- let me scroll
15 here.

16 You can see that Dr. Broadnax was
17 sentenced to five years' probation and ordered to
18 pay \$145,000 in restitution.

19 Do you see that?

20 A. Yes.

21 Q. And in the right-hand column of this DEA
22 document, it says that he pleaded guilty to writing
23 prescription for Oxycontin and Percocet to people
24 who were not his patients and didn't need the
25 medication.

1 And that's just one example in this
2 272-page listing marked as Exhibit 4.

3 Do you see that?

4 A. Yes.

5 MR. WEINBERGER: Objection.

6 BY MS. SWIFT:

7 Q. Ms. Ashley, have you seen documents like
8 the 272-page listing I've marked as Exhibit 4 in
9 your time at DEA?

10 MR. SOBOTKIN: Objection.

11 You can answer.

12 THE WITNESS: Oh, I said yes. I'm sorry.

13 MR. SOBOTKIN: I'm sorry. I didn't --

14 BY MS. SWIFT:

15 Q. Do you know whether this listing of cases
16 against doctors that I marked as Exhibit 4 is
17 comprehensive?

18 MR. SOBOTKIN: Objection.

19 MR. WEINBERGER: Objection.

20 THE WITNESS: I don't.

21 BY MS. SWIFT:

22 Q. I'll represent to you that it does not
23 include anything about a Dr. Adolph Harper, another
24 Ohio doctor.

25 Have you ever heard of Dr. Harper?

1 A. No.

2 MR. SOBOTKIN: Objection. I'm going

3 to ...

4 BY MS. SWIFT:

5 Q. Would you agree, based on your career at
6 DEA, that DEA's crackdown on bad doctors, rogue pain
7 clinics, and pill mills helped reduce illegitimate
8 prescriptions being filled?

9 A. Help to reduce it, yeah, I imagine so,
10 yes.

11 Q. Would you agree with me that DEA's
12 crackdown on bad doctors, rogue pain clinics, and
13 pill mills helped prevent diversion?

14 A. Yes.

15 Q. You understand that DEA ultimately, in
16 around the 2016 or 2017 time frame, decreased the
17 amount of opioids that could be legally manufactured
18 for a legitimate use in the United States; is that
19 right?

20 MR. SOBOTKIN: Objection, outside the
21 Touhy authorization.

22 MS. SWIFT: I'm sorry, David. I'm having
23 a hard time hearing you.

24 I'll withdraw the question and ask another
25 one.

1 BY MS. SWIFT:

2 Q. Ms. Ashley, can you pull out Exhibit E
3 from your set of exhibits.

4 MS. SWIFT: This will be Exhibit 5 to the
5 deposition.

6 (Defendant Exhibit 5 was marked
7 for identification.)

8 THE WITNESS: Got it.

9 BY MS. SWIFT:

10 Q. Ms. Ashley, do you recognize what I marked
11 as Exhibit 5 as a statement that you gave to the
12 Senate Judiciary Committee in 2017?

13 A. Okay. Yes.

14 Q. If you turn to Page 4, I'd like to ask you
15 about your statement in the bottom paragraph.

16 You told the Senate Judiciary Committee
17 that "Since 2014, DEA has observed a decline in
18 prescriptions written for certain Schedule II
19 opioids."

20 Is that right?

21 A. That's right.

22 Q. Would you agree that doctors, in general,
23 stopped writing so many opioid prescriptions in that
24 time frame, not just bad doctors who may have been
25 operating out of a pill mill or a pain clinic, a

1 rogue pain clinic? Would you agree with that?

2 MR. SOBOTKIN: Objection.

3 MR. WEINBERGER: Objection.

4 THE WITNESS: Yeah, it's likely, yes.

5 Yes.

6 BY MS. SWIFT:

7 Q. Then in your statement to the Senate
8 Judiciary Committee, you also said that "These
9 declines directly impacted the factors DEA considers
10 when establishing the APQs for Schedule II opioids."

11 What are APQs?

12 A. That's the aggregate production quota.
13 It's the quota.

14 Q. Is that a reference to the amount of
15 opioids that the DEA allows to be legally
16 manufactured every year?

17 MR. SOBOTKIN: Objection.

18 MR. WEINBERGER: Objection as to the scope
19 of this deposition.

20 We were notified by the Department of
21 Justice as to what the scope of this deposition
22 would be. And this is way beyond that scope
23 and was, I believe, covered in the first
24 deposition.

25 Note my continuing objection to this line

1 of questioning.

2 MS. SWIFT: It wasn't covered in the first
3 objection [sic], I believe because of
4 plaintiffs' objections to it. And the Touhy
5 authorization, which I'm looking at,
6 specifically authorized testimony about the
7 role and responsibilities of DEA, and this is a
8 question directly related to that.

9 And the only question is whether APQs, or
10 aggregate production quotas, is a reference to
11 the amount of opioid medications that the DEA
12 allows to be legally manufactured each year.

13 MR. WEINBERGER: Objection.

14 THE WITNESS: Am I answering now?

15 MR. SOBOTKIN: You can answer that one.

16 THE WITNESS: Oh, okay.

17 It's -- I guess I wouldn't phrase it in
18 that way. It's a determination of legitimate
19 need. So I guess that's one of the factors,
20 the amount of prescriptions that are written.
21 That's only one part.

22 BY MS. SWIFT:

23 Q. But the quota that the DEA sets each
24 year --

25 A. Yeah.

1 Q. -- does that set a limit on how many
2 opioids can be legally manufactured in the
3 United States?

4 MR. WEINBERGER: Objection.

5 THE WITNESS: Yeah, but it's more complex
6 than that. But, yes, ultimately, yes.

7 BY MS. SWIFT:

8 Q. Following the decrease in doctors writing
9 prescriptions for opioids, DEA reduced the amount of
10 opioids that could be manufactured each year,
11 correct?

12 A. Yeah. But, again, that's part of the
13 consideration. But, yes, that did happen.

14 Q. In your statement to the Senate Judiciary
15 Committee that I marked as Exhibit 5, you said, "In
16 October 2016, DEA announced a 25 percent reduction
17 (or more) in the 2017 APQs," or quotas, "for many
18 prescription opioids, including oxycodone,
19 hydrocodone, fentanyl, hydromorphone, and morphine,"
20 correct?

21 A. Correct.

22 Q. You went on to say that "Hydrocodone was
23 reduced to 66 percent of the previous years' (2016)
24 level," correct?

25 A. Correct.

1 Q. We've talked a bit about bad doctors,
2 rogue pain clinics, and pill mills that drove
3 illegitimate prescribing and dispensing in the 2010
4 to 2013 time frame.

5 I'd like to now ask you about your
6 understanding of DEA's views about other doctors,
7 the ones who were trying to do right by their
8 patients.

9 And for that, I'd like you to take out
10 envelope -- the envelope marked J, as in jolly.

11 MR. WEINBERGER: Objection to the
12 statement of counsel.

13 MS. SWIFT: I'm sorry, it's actually JJ.
14 My apologies.

15 MR. WEINBERGER: Objection to the
16 introductory statement of counsel.

17 THE WITNESS: I have it.

18 (Defendant Exhibit 6 was marked
19 for identification.)

20 BY MS. SWIFT:

21 Q. Do you have that in front of you,
22 Ms. Ashley?

23 A. Yes.

24 Q. Do you see that what I've marked as
25 Exhibit 6 is a hearing transcript from the Committee

1 on the Judiciary of the House of Representatives and
2 Congress from May of 2018?

3 A. Okay.

4 Q. And if you look at Page 3, the Table of
5 Contents, you can see that the witnesses who
6 testified, the first one on the list is Robert W.
7 Patterson, acting administrator, Drug Enforcement
8 Administration.

9 Do you see that?

10 A. Yes.

11 Q. Turn, if you would, please, to Page 32 of
12 this hearing transcript that I marked as Exhibit 6.

13 Do you see close to the top of the page
14 where it says "Mr. Patterson"?

15 A. Yes.

16 Q. And Mr. Patterson testified -- I'm not
17 going to read that entire paragraph, but do you see
18 that at the end of that paragraph, the last sentence
19 right before Mr. Sensenbrenner starts speaking?

20 Do you see that?

21 A. Yes.

22 Q. Mr. Patterson testified, "I look at the
23 vast majority of doctors: 99.99 percent are all
24 trying to do right by their patients."

25 Do you agree with that statement, based on

1 your experience at DEA?

2 MR. WEINBERGER: Objection.

3 THE WITNESS: I believe the vast majority,
4 yes, are trying to do the right thing, yes.

5 BY MS. SWIFT:

6 Q. When those doctors write prescriptions for
7 opioid medication to take care of their patients, it
8 is appropriate for pharmacists to fill those
9 prescriptions.

10 Would you agree with that?

11 MR. WEINBERGER: Objection.

12 THE WITNESS: I'm sorry, could you repeat
13 that?

14 BY MS. SWIFT:

15 Q. Sure.

16 When those vast majority of doctors who
17 are trying to do right by their patients, when they
18 write prescriptions for opioid medications, would
19 you agree that it's appropriate for pharmacists to
20 fill those legitimate prescriptions?

21 MR. WEINBERGER: Objection.

22 MR. SOBOTKIN: Renew my objection.

23 THE WITNESS: Sure, if they make an
24 independent judgment, yeah. Yes.

25

1 BY MS. SWIFT:

2 Q. And, in fact, would you also agree that
3 part of DEA's mission is to ensure an adequate
4 supply of controlled substance medications,
5 including opioids, to meet the legitimate medical
6 needs of patients?

7 MR. WEINBERGER: Objection.

8 THE WITNESS: Yes.

9 BY MS. SWIFT:

10 Q. Would you agree, Ms. Ashley, that, even if
11 a doctor does right by her patients and writes a
12 legitimate prescription, and the pharmacist properly
13 fills that prescription in her professional judgment
14 that it is a legitimate prescription, even if those
15 things both happen, it is still possible for that
16 medication to get into the wrong hands through no
17 fault of the pharmacist or the doctor?

18 MR. SOBOTKIN: Objection.

19 MR. WEINBERGER: Objection.

20 THE WITNESS: That is possible, yes.

21 BY MS. SWIFT:

22 Q. All right. Turn back to what was -- it
23 was in Exhibit Q, so you took it out of the
24 envelope. I'll tell you what it is on the first
25 page.

1 A. I tried to keep them organized. Let's
2 see.

3 Q. This is the one marked as Exhibit 1, and
4 it's your PowerPoint presentation that says,
5 "Pharmacy Track, Drug Enforcement Administration,
6 Regulations Update" on the first page. It's got a
7 green and blue banner.

8 A. This one, yes.

9 Q. Yes, that's it.

10 MR. WEINBERGER: What page are we on?

11 MS. SWIFT: I was about to tell you.
12 We're going to go to Page 10 of Exhibit 1.

13 MR. SOBOTKIN: I'm just going to object,
14 just briefly, to the characterization of this
15 as Ms. Ashley's PowerPoint. I think there was
16 some hedging on whether she recalled giving
17 this presentation or not.

18 MS. SWIFT: That was a different one,
19 David. You can see on the first page of this
20 one it says, "Presenter: Demetra Ashley."

21 MR. SOBOTKIN: Sure.

22 BY MS. SWIFT:

23 Q. Okay. Ms. Ashley, are you on Page 10 of
24 Exhibit 1?

25 A. Yes.

1 Q. And I should ask you, do you recall giving
2 this presentation?

3 A. I don't specifically recall giving it, but
4 I'm familiar with this. I think -- I'm pretty
5 certain it's me, yeah, that gave this.

6 Q. On Page 10 --

7 A. But I --

8 (Simultaneous speaking.)

9 BY MS. SWIFT:

10 Q. Understood.

11 On Page 10 of your presentation marked as
12 Exhibit 1, you wrote, "Most Frequent Method of
13 Obtaining Pharmaceutical Controlled Substance for
14 Nonmedical Use. Friends and Family ... For Free."

15 Correct?

16 A. Yes.

17 MR. SOBOTKIN: Objection.

18 BY MS. SWIFT:

19 Q. Would you agree with me that those
20 prescriptions that people may obtain from their
21 friends or their family, those prescriptions may
22 have been legitimately written?

23 A. Yes.

24 Q. Would you agree with me that those
25 prescriptions may have been legitimately filled by a

1 pharmacist?

2 A. Yes.

3 Q. All right. If you take a -- turn to
4 Page 11, the next page in Exhibit 1, the heading
5 here says, "Medicine Cabinets: Easy Access."

6 Do you see that?

7 A. Yes.

8 Q. What is that reference to?

9 MR. SOBOTKIN: Objection.

10 THE WITNESS: Basically, in this slide,
11 giving the example that medications can be
12 taken from a medicine cabinet at someone's
13 home.

14 BY MS. SWIFT:

15 Q. You have a number of statistics on this
16 Slide 11 of Exhibit 1.

17 The first one says, "More than half of
18 teams (73 percent) indicate that it's easy to get
19 prescription drugs from their parents's medicine
20 cabinet."

21 Is the point here to raise awareness and
22 get people to properly dispose of unused medication?

23 A. That is the point, yes.

24 Q. At the end of this PowerPoint, starting
25 around Slide 40, there are a number of slides about

1 the proper collection and disposal of controlled
2 substances.

3 Do you see that?

4 A. Yes.

5 Q. Slide 40, the heading says, "Collection."

6 And it says, "Collection means to receive a
7 controlled substance for the purpose of destruction
8 from" a number of sources, correct?

9 A. I'm sorry, yes, that's correct.

10 Q. And then there's a picture at the bottom
11 of Slide 40 of a few prescription drop boxes.

12 Are those drop boxes for people to dispose
13 of medication they no longer need?

14 A. Yes.

15 Q. Are you aware that drop boxes like that
16 exist in Walgreens stores all over the country?

17 A. Yes.

18 Q. And I know that you live in Chicago. I do
19 too.

20 A. Oh, get out.

21 Q. And I say that because the picture I'm
22 going to show you now, I'm marking -- if you'll take
23 a look at -- let's see. That's the wrong one.

24 Take a look, if you will, at the envelope
25 marked MM, as in Mary Mary.

1 MS. SWIFT: This will be Exhibit 7.

2 (Defendant Exhibit 7 was marked
3 for identification.)

4 THE WITNESS: Uh-huh. I have it.

5 BY MS. SWIFT:

6 Q. The picture --

7 MR. WEINBERGER: Can you hold on for just
8 a second so I can get this out, please?

9 MS. SWIFT: Sure.

10 MR. WEINBERGER: What exhibit is this?

11 MS. SWIFT: This is -- it's now been
12 marked as Exhibit 7.

13 THE WITNESS: While we're on this brief
14 pause, my contractor just said 9:20. He will
15 be here at 9:20.

16 MS. SWIFT: Okay. Got it. So we've got
17 about a half hour.

18 MR. WEINBERGER: Okay. Go ahead.

19 BY MS. SWIFT:

20 Q. Ms. Ashley, do you recognize the picture
21 in Exhibit 7 as a Walgreens safe medication disposal
22 drop box?

23 A. Yes.

24 Q. I'll represent to you that this is a
25 Walgreens safe medication disposal drop box in

1 Chicago.

2 Have you seen drop boxes like this --

3 A. Yes.

4 Q. -- in Walgreens around Chicago?

5 MR. WEINBERGER: Objection.

6 THE WITNESS: Yes.

7 BY MS. SWIFT:

8 Q. Would you agree with me that it is a good
9 thing for pharmacies like Walgreens to provide
10 opportunities for safe medication disposal?

11 A. Yes, I agree with you.

12 Q. Would you agree, based on your experience
13 at DEA, that providing opportunities for safe
14 medication disposal helps to -- helps reduce
15 medicine cabinet diversion?

16 MR. SOBOTKIN: Objection.

17 THE WITNESS: Yes. Oh, I'm sorry. Yes.

18 BY MS. SWIFT:

19 Q. Would you agree that providing
20 opportunities for safe medication disposal also
21 helps reduce other types of diversion?

22 A. Yes, I agree.

23 Q. Okay. Now I'd like to ask you some
24 questions about your understanding of DEA's rules
25 and regulations for pharmacists.

1 Does the DEA, in your understanding,
2 register every pharmacy that dispenses controlled
3 substances to patients?

4 A. Yes.

5 Q. Does that include -- strike that.

6 Can a pharmacy fill a prescription for an
7 opioid medication without a DEA registration?

8 MR. SOBOTKIN: Objection.

9 THE WITNESS: Not legally, no.

10 BY MS. SWIFT:

11 Q. All right. If you would, please, take out
12 the envelope that you have that is marked with the
13 letter G, as in good.

14 A. I have it.

15 MS. SWIFT: This will be Exhibit 8 to
16 Ms. Ashley's deposition.

17 (Defendant Exhibit 8 was marked
18 for identification.)

19 BY MS. SWIFT:

20 Q. Ms. Ashley, do you see that this is the
21 DEA's Pharmacist's Manual that I marked as
22 Exhibit 8?

23 A. Yes.

24 Q. Is the DEA's Pharmacist's Manual, is
25 that -- in your experience, is that published

1 guidance from DEA for pharmacists on the Controlled
2 Substances Act?

3 A. Yes.

4 Q. And if you'll turn to Page 15 of
5 Exhibit 8 -- well, let me just ask.

6 Do you understand that a pharmacy must
7 renew its DEA registration every three years?

8 A. Pharmacist, I don't remember. I thought
9 it was every year. Is it every three? I forgot.

10 Pharmacists, I don't know. I forgot. I'm
11 sorry.

12 Q. Actually, I have the page number wrong.
13 It's Page 14. I apologize.

14 Do you see the heading Renewal of Pharmacy
15 Registration on Page 14?

16 A. Yes.

17 Q. It says, "A pharmacy registration must be
18 renewed every three years."

19 A. Three years. Okay. Yes.

20 Q. Was that -- was the same true when you
21 were at the DEA?

22 A. Yes.

23 Q. Now, if you'll look at Page 18 of the
24 pharmacist's manual, do you see the heading "Denial
25 of Registration in the Public Interest"?

1 A. Yes.

2 Q. Is it correct that DEA can deny a pharmacy
3 a registration if DEA deems that to be in the public
4 interest?

5 MR. WEINBERGER: Objection.

6 THE WITNESS: Yes. Yes.

7 BY MS. SWIFT:

8 Q. Was that also true when you were at the
9 DEA?

10 A. Yes.

11 Q. Then under that heading "Denial of
12 Registration in the Public Interest," there are a
13 number of factors that it says DEA considers to
14 determine, whether the public interest provides --
15 strike that.

16 There are a number of factors listed in
17 the pharmacist's manual that the DEA says it
18 considers in determining whether a pharmacist's
19 registration or a pharmacy's registration is in the
20 public interest.

21 Do you see that?

22 A. Yes.

23 Q. The first factor listed is "The
24 recommendation of the appropriate state licensing
25 board or professional disciplinary authority."

1 Do you see that?

2 A. Yes.

3 Q. So, for example, in Ohio, is it correct to
4 say, based on your experience at DEA, that DEA would
5 consider a recommendation of the Ohio Board of
6 Pharmacy?

7 A. It would, yes.

8 Q. Is it your understanding that the Ohio
9 Board of Pharmacy is the responsible agency for
10 licensing and disciplining pharmacists in Ohio?

11 A. Yes.

12 Q. Does DEA also have the authority to
13 suspend or revoke a pharmacy's DEA registration?

14 A. Yes.

15 Q. Is it correct to say that DEA considers
16 several factors before doing that?

17 A. Yes.

18 Q. Is one of those factors whether the
19 pharmacy has had a state license or registration
20 suspended, revoked, or denied by a competent state
21 authority, for example, the Ohio Board of Pharmacy?

22 A. Yes, that's a factor.

23 Q. Does the DEA have the authority to inspect
24 each pharmacy that it registers in person and review
25 its records?

1 A. Yes, they have the authority to do that.

2 Q. Does DEA have access to data regarding the
3 pharmacy's purchases and sales of controlled
4 substances?

5 MR. SOBOTKIN: Objection as to the
6 personal knowledge of Ms. Ashley or not.

7 THE WITNESS: Answer? Yes.

8 MR. SOBOTKIN: You may answer.

9 THE WITNESS: Yes.

10 BY MS. SWIFT:

11 Q. Are examples of the data that DEA has
12 access to DEA's ARCOS shipping data and state
13 prescription monitoring data maintained by state
14 boards of pharmacy and other state agencies?

15 A. The transaction ARCOS shipping data, yes.
16 PDMP, no.

17 Q. DEA does not have access to state PDMP
18 data?

19 A. Not direct access, no.

20 Q. Can DEA get access to state PDMP data from
21 a State Board of Pharmacy if necessary for an
22 investigation?

23 A. Yes.

24 Q. Does DEA use that data, the various types
25 of data that you just testified about, to

1 investigate pharmacies?

2 MR. SOBOTKIN: Objection. Ms. Ashley's
3 testimony about what DEA can and can't do is
4 outside of the scope of the Touhy
5 authorization.

6 MS. SWIFT: Well, the first -- the Touhy
7 authorization, the first item that is
8 authorized is the role and responsibilities of
9 DEA. And my question was whether DEA uses the
10 types of data that we've talked about to
11 investigate pharmacies, which is squarely
12 within the role and responsibility.

13 MR. SOBOTKIN: I understand that piece of
14 it, but the piece -- what causes my objection
15 is the framing of the question of whether DEA
16 can or knows things.

17 If Ms. Ashley knows or has an
18 understanding, that would satisfy my objection.

19 MS. SWIFT: Understood.

20 BY MS. SWIFT:

21 Q. Ms. Ashley, based on your experience at
22 DEA, does DEA use the types of data that you just
23 testified about, ARCOS shipping data, state
24 prescription monitoring data, to investigate
25 pharmacies?

1 A. Yes.

2 Q. Does DEA use that type of data to
3 investigate doctors?

4 A. Yes.

5 Q. Does DEA use that type of data to
6 investigate individual patients?

7 A. I -- well, some of it, yes. Not ARCOS, I
8 don't think, no. But PDMP, yes.

9 Q. Does DEA use that type of data to help
10 ensure that pharmacies are following the law?

11 A. Yes.

12 Q. DEA's regulation on the filling of
13 controlled substance prescriptions by pharmacists is
14 called the Corresponding Responsibility Regulation;
15 is that right?

16 A. Yes.

17 Q. If you'll take a look in the pharmacist
18 manual, which is Exhibit 8, at Page 42, do you see
19 that the Corresponding Responsibility Regulation is
20 described there?

21 A. Yes.

22 Q. That regulation is at 21 CFR 1306.04(a),
23 correct?

24 A. Yes.

25 Q. The Corresponding Responsibility

1 Regulation says that "A pharmacist has a
2 corresponding responsibility for the proper
3 dispensing of controlled substances," correct?

4 A. Yes.

5 Q. That was true the entire time you were at
6 the DEA as well, right?

7 A. Right.

8 Q. In the next paragraph of the pharmacist's
9 manual at Page 42, DEA's guidance is that "A
10 pharmacist is required to exercise sound
11 professional judgment, and to adhere to professional
12 standards, when making a determination about the
13 legitimacy of a controlled substance prescription."

14 Correct?

15 A. Correct.

16 Q. Do you agree with that, based on your
17 experience at DEA?

18 A. Yes, I agree with that.

19 Q. Do you understand that pharmacists
20 sometimes identify issues with prescriptions for
21 controlled substances before they fill them?

22 A. Yes.

23 Q. For example, maybe the pharmacist thinks
24 the prescription is for an unusual combination of
25 drugs and doesn't understand why it has been

1 prescribed.

2 That would be an example when a pharmacist
3 has identified a red flag on that prescription?

4 A. Yes, that's an example.

5 Q. Would you agree with me that the
6 pharmacist is supposed to address those issues
7 before filling the prescription?

8 A. Yes.

9 Q. Would you agree with me that that's part
10 of the pharmacist's corresponding responsibility?

11 A. Yes.

12 Q. Would you agree that there are many ways a
13 pharmacist might satisfy herself that a prescription
14 for a controlled substance is legitimate?

15 A. Yes.

16 Q. For example, a pharmacist might talk to
17 the patient about a drug combination to make sure
18 the patient understands the potential side effects.

19 That's one way she might resolve the red
20 flag?

21 A. That's one way, yes.

22 Q. A pharmacist might also call the doctor to
23 get a better understanding of the prescription.

24 Would you agree with that?

25 A. I agree.

1 Q. The pharmacist might check the State
2 Prescription Drug Monitoring Program to see if the
3 patient has been filling similar prescriptions at
4 other pharmacies.

5 Would you agree with that?

6 A. I agree.

7 Q. Would you agree that checking the State
8 Prescription Drug Monitoring Program may be required
9 depending on state law?

10 A. I agree.

11 Q. Would you agree with me that the
12 pharmacist might document what she did, particularly
13 if she thinks there is a red flag on a prescription?

14 A. I agree.

15 Q. Would you agree with me that there is no
16 DEA requirement that the pharmacist document the
17 steps she takes to resolve a red flag before filling
18 a prescription?

19 A. A federal requirement, no, I don't think
20 there is. That they document it, that's what you're
21 asking me?

22 Q. Yes, that's what I'm asking.

23 A. Yeah.

24 Q. There is no federal requirement to
25 document the resolution of red flags; is that what

1 you said?

2 A. To document the resolution, not that I can
3 recall, no.

4 Q. The pharmacist might look at a
5 prescription for an unusual quantity or a
6 combination of drugs and determine, based on her
7 knowledge of that patient, that the prescription
8 presents no issues.

9 Would you agree with that?

10 A. Based on her knowledge of that patient?

11 Q. Yes.

12 A. That they may decide to fill the
13 prescription? Yeah, that's possible, yes.

14 Q. The pharmacist might determine that there
15 is not a red flag on that prescription based on her
16 knowledge of the patient, the doctor, or other
17 circumstances.

18 Would you agree with that?

19 A. I agree.

20 Q. In the pharmacist's professional judgment,
21 she might determine that the prescription is
22 legitimate and appropriately fill it, even if it is
23 for a large quantity of opioids.

24 Would you agree with that?

25 A. Based on other knowledge?

1 Q. Yes.

2 A. Yes, I do agree with that.

3 Q. The pharmacist might, in her professional
4 judgment, determine that a prescription is
5 legitimate and appropriately fill it even if it is
6 for an unusual combination of drugs.

7 Would you agree with that?

8 A. Yes.

9 Q. The pharmacist, in her professional
10 judgment, might determine that a prescription is
11 legitimate and appropriately fill it even if the
12 patient traveled a long distance to visit the doctor
13 or the pharmacy?

14 A. Well, yeah, I guess there would be
15 additional information. I mean, it would have to be
16 additional information. But, sure, they may.

17 Q. The same is true even if the patient paid
18 in cash; the pharmacist might determine in her
19 professional judgment, based on her knowledge, that
20 that prescription is legitimate and appropriately
21 fill that prescription?

22 A. There are circumstances that would make
23 that true, yes.

24 Q. There may be any number of good reasons to
25 fill a prescription that was paid in cash.

1 Would you agree with that?

2 A. Yes.

3 Q. If a prescription bears red flags, it does
4 not necessarily mean that it lacks a legitimate
5 medical purpose.

6 Would you agree with that?

7 A. I agree with that.

8 Q. If a prescription bears a red flag, it
9 does not necessarily mean that a patient does not
10 need that medication to treat her condition.

11 Would you agree with that?

12 A. I agree with that.

13 Q. If a prescription bears red flags, it does
14 not necessarily mean that it will lead to diversion.

15 Would you agree with that?

16 A. I agree with that.

17 Q. Prescriptions that bear red flags may well
18 have been written for legitimate medical reasons by
19 legitimate doctors for legitimate patients, in which
20 case the pharmacist should fill those prescriptions.

21 Would you agree with that?

22 A. No. I mean, because the way you just
23 described it, there are no red flags.

24 Q. I'm sorry, I don't understand your answer.
25 Let me try to ask it another way.

1 A prescription that bears a red flag may
2 be still -- may still have been written by a
3 legitimate physician.

4 Would you agree with that?

5 A. Well, yeah, I guess that's possible, yeah.

6 Q. A prescription that bears a red flag can
7 still be for a legitimate medical purpose and a
8 legitimate patient.

9 Would you agree with that?

10 A. Legitimate, yeah, I guess. Like, kind of
11 takes away the red flags if it's legitimate medical
12 purpose and written by a legitimate physician for a
13 legitimate medical purpose, then what -- it seems to
14 me it takes away the red flag.

15 Q. Understood.

16 A. But I guess it's possible.

17 Q. Would you agree with me that there's no
18 DEA requirement that a pharmacy conduct a computer
19 data analysis on its own prescription records before
20 a pharmacist at that pharmacy fills a prescription?

21 MR. WEINBERGER: Objection.

22 MR. SOBOTKIN: Objection.

23 THE WITNESS: The DEA does not have a
24 requirement that a pharmacy has a data
25 platform. Is that what you're asking me?

1 BY MS. SWIFT:

2 Q. The DEA does not have a requirement that a
3 pharmacy conduct a computer data analysis on its
4 prescription records before a pharmacist fills a
5 prescription?

6 MR. WEINBERGER: Objection.

7 THE WITNESS: No, there is no -- that I'm
8 aware of, that I can recall, no.

9 BY MS. SWIFT:

10 Q. Do you agree that there is also no
11 published guidance by DEA suggesting that pharmacies
12 conduct a computer data analysis on their own
13 prescription records before filling a prescription?

14 MR. SOBOTKIN: Objection.

15 MR. WEINBERGER: Objection.

16 THE WITNESS: Yeah, that's hard for me to
17 answer. I don't know. I don't the answer to
18 that question.

19 BY MS. SWIFT:

20 Q. In your experience in more than 30 years
21 at the DEA, can you think of any published guidance
22 by DEA suggesting that pharmacies conduct computer
23 data analysis on their prescription records?

24 MR. WEINBERGER: Objection.

25 MR. SOBOTKIN: Objection.

1 THE WITNESS: Published guidance, not that
2 I recall.

3 BY MS. SWIFT:

4 Q. There's no DEA requirement that a pharmacy
5 block particular prescriptions or prescribers
6 systematically that you can think of, is there?

7 MR. SOBOTKIN: Objection.

8 MR. WEINBERGER: Objection.

9 THE WITNESS: No, not that I can think of.

10 BY MS. SWIFT:

11 Q. Would you agree with me, Ms. Ashley, that
12 even if a pharmacy has a computer system doing some
13 sort of data analysis, the pharmacist still has to
14 exercise her professional judgment before filling a
15 prescription?

16 MR. SOBOTKIN: Objection.

17 MR. WEINBERGER: Objection.

18 THE WITNESS: Yes, I agree with that.

19 BY MS. SWIFT:

20 Q. Okay. If you would, please, take out the
21 envelope marked O.

22 MS. SWIFT: This will be Exhibit 9.

23 (Defendant Exhibit 9 was marked
24 for identification.)
25

1 BY MS. SWIFT:

2 Q. Do you have that in front of you,
3 Ms. Ashley?

4 A. I do.

5 Q. Exhibit 9 is a -- it's a presentation that
6 was produced by DEA, though we have it printed in
7 the native form, so it doesn't reflect the Bates
8 number at the bottom right-hand corner. That Bates
9 number on the produced version is DEA-T3CC00000128,
10 and it's a presentation by William Winsley,
11 executive director, Ohio State Board of Pharmacy
12 with the title "Drugs, Drugs, and More Drugs."

13 Ms. Ashley, have you ever seen this
14 presentation?

15 A. I -- I don't recall. I've seen him
16 present before, so it's likely this one.

17 Q. Are you aware that presentations like this
18 one from Mr. Winsley from the Ohio State Board of
19 Pharmacy are available on DEA's website?

20 A. Oh, no, I didn't know that.

21 Q. But you've seen presentations by
22 Mr. Winsley? Did I hear that correctly?

23 A. Yes.

24 Q. If you take a look at Page 3 of
25 Mr. Winsley's presentation that I marked as

1 Exhibit 9, that's the Corresponding Responsibility
2 Regulation, correct?

3 A. Yes.

4 Q. And you see there, he -- Mr. Winsley cites
5 both to the DEA regulation, 1306.04 of the CFR, and
6 also to an Ohio regulation, 4729-5-21.

7 Do you see that?

8 A. Yes.

9 Q. And do you know whether it is true that
10 the Ohio regulation on corresponding responsibility
11 is the same as the federal corresponding
12 responsibility requirement?

13 A. No, I don't know that.

14 Q. Turn, if you would, please, to Page 9 of
15 Mr. Winsley's presentation.

16 Do you see that it says, in the middle of
17 the page, "Dispensing pharmacists need to remember
18 that they, not their district supervisors, have been
19 assigned the 'corresponding responsibility'?"

20 A. Yeah, I see that.

21 Q. Do you agree with that statement?

22 A. Not totally, no.

23 Q. Why don't you agree with it?

24 A. Because the supervisor, in my opinion, is
25 also responsible for what the -- the staff that they

1 supervise.

2 Q. Do you know whether that is true under
3 Ohio law?

4 MR. SOBOTKIN: Objection, calls for a
5 legal conclusion.

6 MS. SWIFT: I'm just asking for her
7 understanding.

8 THE WITNESS: I don't, under Ohio law, I
9 don't know.

10 BY MS. SWIFT:

11 Q. Do you agree that it's important for
12 pharmacists to exercise their individual
13 corresponding responsibility before filling a
14 prescription?

15 A. I agree with that.

16 Q. Do you agree that if a pharmacist doesn't
17 exercise her corresponding responsibility, it could
18 lead to inappropriate prescriptions being filled?

19 A. I agree with that.

20 Q. This Ohio Board of Pharmacy presentation
21 produced by DEA goes on to talk about one Ohio
22 pharmacy where the pharmacist did not exercise his
23 corresponding responsibility.

24 I'd like you to take a look at Page 10 of
25 the presentation, just -- which is an introduction

1 into this section of the presentation. It says, "Is
2 it all just pill mills? How about the internet?"

3 Do you see that?

4 A. I do.

5 Q. Do you agree, Ms. Ashley, that internet
6 prescriptions were a significant problem, internet
7 prescriptions for opioids were a significant problem
8 for a period of time?

9 MR. WEINBERGER: Objection.

10 THE WITNESS: Yes. Oh, sorry.

11 MR. SOBOTKIN: You can answer.

12 THE WITNESS: They were, yes.

13 BY MS. SWIFT:

14 Q. Page 11 of this Ohio Board of Pharmacy
15 presentation produced by DEA refers to a Caringwell
16 Pharmacy and Jae Lee, the pharmacist.

17 Do you see that?

18 A. I do, yes.

19 Q. This page purports to show legitimate
20 prescription patients for the Caringwell Pharmacy,
21 and then it highlights -- you can see a series of
22 small pins in Central Ohio.

23 Do you see that?

24 A. Yes.

25 Q. Then if you turn to Page 12, Mr. Winsley's

1 Ohio Board of Pharmacy presentation shows a map
2 reflecting the Caringwell Pharmacy's legitimate
3 prescription prescribers, also a small number of
4 pins clustered in Central Ohio.

5 Do you see that?

6 A. Yes.

7 Q. Page 13 of the Ohio Board of Pharmacy
8 presentation shows Caringwell Pharmacy's internet
9 prescription prescribers. And you can see on this
10 map, the pins are all over the country scattered
11 around.

12 Do you see that?

13 A. Yes.

14 Q. Then Page 14 shows Caringwell Pharmacy's
15 internet prescription customers, and those are --
16 there's far, far more pins all over the country.

17 Do you see that?

18 A. Yes.

19 Q. Do you know, based on your experience at
20 DEA, whether Ohio Board of Pharmacy revoked the
21 license for this pharmacy?

22 A. I don't know.

23 Q. Would you agree with me that that is what
24 the State Board of Pharmacy is supposed to do when a
25 pharmacist isn't following his or her corresponding

1 responsibility?

2 MR. SOBOTKIN: Objection. You can answer.

3 THE WITNESS: Yes, I agree.

4 BY MS. SWIFT:

5 Q. Would you agree that DEA, in your
6 experience, isn't involved in every investigation of
7 a rogue pharmacy?

8 A. Yes, I agree with that.

9 Q. Based on your experience at DEA, is it
10 true that State Boards of Pharmacy are charged with
11 investigating pharmacies that don't follow the law?

12 A. Yes, I agree with that.

13 Q. Is it your understanding that State Boards
14 of Pharmacy are also law enforcement agencies?

15 A. I don't know that always.

16 Q. Do you know that that's sometimes the
17 case, as in Ohio?

18 A. Yes, I think it's sometimes the case, yes.

19 Q. Do you understand that State Board of
20 Pharmacies do revoke licenses when pharmacies
21 violate the law?

22 A. Yes.

23 Q. Do you Agree, Ms. Ashley, that internet
24 pharmacies were a significant problem for a period
25 of time?

1 MR. WEINBERGER: Objection.

2 MR. SOBOTKIN: Objection, vague.

3 THE WITNESS: Yes, I agree with that.

4 BY MS. SWIFT:

5 Q. Turn, if you would, please, or pull out
6 the envelope marked U, as in ukulele.

7 MS. SWIFT: I will mark this one as
8 Exhibit 10.

9 (Defendant Exhibit 10 was marked
10 for identification.)

11 BY MS. SWIFT:

12 Q. Ms. Ashley, Exhibit 10, the first page is
13 an email to a number of people, including yourself,
14 dated February 26, 2004.

15 Do you see that?

16 A. Yes.

17 Q. It attaches a paper by an organization at
18 Columbia University entitled "You've Got Drugs.
19 Prescription Drug Pushers on the Internet. A CASA
20 White Paper."

21 Do you see that?

22 A. Yes.

23 Q. And if you'd turn with me, please, to
24 Bates number ending 672 at the bottom right-hand
25 corner.

1 A. I have it.

2 Q. You can see that this is -- it's a paper
3 based on a study by the National Center on Addiction
4 and Substance Abuse, CASA, at Columbia University.

5 Do you see that?

6 A. I do.

7 Q. Then in the third paragraph on this page,
8 it says, the studies showed that of the 157 websites
9 selling controlled prescription drugs on the
10 internet, 90 percent did not require a prescription.

11 Do you see that?

12 A. I do.

13 Q. That's a violation of DEA regulations and
14 federal law, correct?

15 A. Correct.

16 Q. Then if you'd turn with me, please, to the
17 Bates number ending 674, so just two pages farther.

18 A. Yes.

19 Q. In the third paragraph, do you see that it
20 says that the findings of this study were so
21 alarming that CASA and an organization called BDA
22 considered it their obligation to release this
23 information prior to the completion of the
24 comprehensive study?

25 A. I do.

1 Q. All right. Now, hold on to that one. I'm
2 going to mark another one that is similar. If you
3 would, please, pull out the envelope marked V, as in
4 victory.

5 MS. SWIFT: This will be Exhibit 11.

6 (Defendant Exhibit 11 was marked
7 for identification.)

8 BY MS. SWIFT:

9 Q. Ms. Ashley, Exhibit 11, it starts with an
10 email to you dated July 9th, 2008, with the subject
11 line "CASA report."

12 Do you see that?

13 A. Yes.

14 Q. Do you recall receiving either of these
15 two CASA reports that I've marked as Exhibit 10 and
16 11?

17 A. No, I do not recall.

18 Q. The 2008 report, it's another -- if you
19 look at the second page of the exhibit, it's another
20 CASA white paper, this time from July 2008, and the
21 title is "You've Got Drugs V: Prescription Drug
22 Pushers on the Internet."

23 Do you see that?

24 A. Yes.

25 Q. And if you'll turn to the Bates number

1 ending 959.

2 A. I have it.

3 Q. The first paragraph says that CASA, this
4 organization at Columbia University, has been
5 tracking the availability of controlled prescription
6 drugs over the internet for five years.

7 Do you see that?

8 A. Yes.

9 Q. Then in the third paragraph, the second
10 sentence says --

11 MR. WEINBERGER: What page are we on?

12 MS. SWIFT: We're on the Bates number
13 ending 959.

14 MR. WEINBERGER: Thank you.

15 BY MS. SWIFT:

16 Q. Ms. Ashley, do you see in the third
17 paragraph, the second sentence reads, "This year the
18 number of sites that advertise and offer controlled
19 prescription drugs for sale declined from 2007."

20 Do you see that?

21 A. Yes.

22 Q. It goes on to say "However," a couple of
23 sentences below that, "widespread availability
24 continues."

25 Do you see that?

1 A. You lost me.

2 Oh, yes, I do.

3 Q. Then on the next page, Bates Number ending
4 960, in the second paragraph where it says "this
5 report offers," do you see that?

6 A. Yes.

7 Q. This CASA report from Columbia University
8 says that it "offers a range of recommendations and
9 calls on the Congress to enact legislation closing
10 this illicit channel of distribution."

11 Do you see that?

12 A. Yes.

13 Q. Are you aware, based on your experience at
14 DEA, that Congress did pass legislation soon after
15 this called the Ryan Haight Act?

16 A. Yes.

17 Q. Are you aware that the Ryan Haight Act
18 became effective in 2009?

19 A. Sounds about right, yeah.

20 Q. And if it's helpful, take a look at the
21 document in Envelope AA.

22 A. I have it.

23 Q. That document is an email to you dated
24 March of 2016, correct?

25 A. Yes.

1 Q. With the subject line "Internet
2 pharmacies"?

3 A. Yes.

4 Q. And then if you follow through the chain
5 of emails, there's a summary of the Ryan Haight
6 Online Pharmacy Consumer Protection Act of 2008.

7 Do you see that?

8 A. Yes.

9 Q. At the bottom of the first page, it says
10 that the Ryan Haight Act "amends the CSA," the
11 Controlled Substances Act, "by adding a series of
12 new regulatory requirements and criminal provisions
13 designed to combat the proliferation of so-called
14 'rogue Internet sites' that unlawfully dispense
15 controlled substances by means of the Internet."

16 Is that your understanding of what the
17 Ryan Haight Act did?

18 A. Yes.

19 Q. Then in the next paragraph, you see that
20 the law, the Ryan Haight Act, became effective in
21 April of 2009?

22 A. Yes.

23 Q. Is it accurate to say that the Ryan Haight
24 Act made it illegal to operate an online pharmacy
25 without a DEA registration authorizing that pharmacy

1 to operate online?

2 A. Correct, yes.

3 Q. Did the Ryan Haight Act, in your
4 understanding, subject violators to criminal
5 penalties?

6 A. Yes.

7 Q. Would you agree with me that the Ryan
8 Haight Act effectively curtailed illegal internet
9 pharmacies?

10 MR. SOBOTKIN: Objection.

11 THE WITNESS: I'm sorry. Yes, I believe
12 it was effective.

13 BY MS. SWIFT:

14 Q. When it comes to the corresponding
15 responsibility obligation, would you agree with me
16 based on your experience at DEA, that the law is the
17 same for every pharmacist, whether that pharmacist
18 is employed by a large chain like Walgreens or a
19 single mom-and-pop pharmacy?

20 A. The law is the same, correct.

21 Q. Do the Controlled Substances Act and its
22 regulations require the same thing of every
23 registered pharmacy, whether that pharmacy is part
24 of a big chain or on stands all by itself?

25 A. Yes, the law is the same, yes.

1 Q. I'm about --

2 MR. BUSH: Kate, I'm sorry to interrupt
3 you, but before you get too far away from that
4 document, you did not mark the previous
5 document as an exhibit.

6 MS. SWIFT: I didn't. And I'm happy to do
7 it. I wasn't planning on it.

8 MR. BUSH: Oh, if you weren't doing it,
9 that's fine. I thought maybe you just
10 overlooked it. If you don't want to mark it,
11 that's fine.

12 MS. SWIFT: I noticed the time,
13 Ms. Ashley.

14 THE WITNESS: Yeah, he actually is not
15 here. I can see out the window.

16 MS. SWIFT: All right.

17 MR. WEINBERGER: So that last document was
18 not 12? You didn't mark it as Exhibit 12?

19 MS. SWIFT: I did not, but I can go ahead
20 and do it. I'm happy to do it.

21 MR. WEINBERGER: Okay. Whatever you want
22 to do.

23 THE WITNESS: Get some water.

24 MS. SWIFT: It is now Exhibit 12.

25

1 (Defendant Exhibit 12 was marked
2 for identification.)

3 THE WITNESS: Sorry.

4 BY MS. SWIFT:

5 Q. You're fine. All right. Just let me know
6 if your contractor shows up and we will stop, but
7 I'm going to switch to a new topic.

8 Ms. Ashley, in your time at the DEA, did
9 DEA work with pharmacy chains and pharmacy
10 associations like the National Association of Boards
11 of Pharmacy to develop a consensus around potential
12 red flags a pharmacist might identify on a
13 controlled substance prescription?

14 A. Yes.

15 Q. If you'll take a look at the envelope with
16 the letter D, for dog.

17 MS. SWIFT: This will be Exhibit 13.

18 (Defendant Exhibit 13 was marked
19 for identification.)

20 BY MS. SWIFT:

21 Q. Do you have that in front of you,
22 Ms. Ashley?

23 A. Yes.

24 Q. Is the document that I marked as
25 Exhibit 13, is this a consensus document that DEA

1 worked on with the National Association of Boards of
2 Pharmacy and others on red flag warning signs
3 related to prescribing and dispensing controlled
4 substances?

5 A. Yes.

6 MR. SOBOTKIN: Objection.

7 THE WITNESS: Oh, I'm sorry.

8 Yes.

9 BY MS. SWIFT:

10 Q. You can see that there's a list of
11 stakeholders on the first page of this consensus
12 document that I marked as Exhibit 13.

13 Do you see that?

14 A. Yes.

15 Q. CVS, Walgreens, and Rite Aid are all
16 listed among the stakeholders on this consensus
17 document about red flags, correct?

18 A. Yes.

19 Q. There are also a number of other
20 organizations listed as stakeholders on this
21 consensus document including the American Medical
22 Association.

23 Do you see that?

24 A. Yes.

25 Q. The National Association of Boards of

1 Pharmacy is listed.

2 Do you see that?

3 A. Yes.

4 Q. The National Association of Chain
5 Drugstores is listed.

6 Do you see that?

7 A. Yes.

8 Q. And there are a number of other
9 associations of various types of healthcare
10 providers.

11 Do you see that?

12 A. Yes.

13 Q. Do you agree, based on your career at DEA,
14 that putting together a document like this
15 stakeholders document on red flag warning signs was
16 a good thing for these pharmacists, pharmacies, and
17 other organizations to do?

18 A. Yes, I agree it was a good thing.

19 Q. And I think you just testified that DEA
20 worked with these pharmacies and other organizations
21 on this consensus document; is that right?

22 A. That's right.

23 Q. If you'll take a look at the bottom of
24 Page 2 of this consensus document on red flags, at
25 the very end of the last paragraph, do you see where

1 it says, "The consensus document however, is not to
2 be construed as establishing any standards of care"?

3 Are you with me?

4 A. I'm trying to find it. You said Page 2,
5 yeah. I'm looking at 3. That will do it.

6 Q. It's the last --

7 A. Yes, I do see it.

8 Q. "The consensus document however, is not to
9 be construed as establishing any standards of care,
10 but considered as general guidelines and as a
11 reminder that healthcare practitioners must comply
12 with federal laws and regulations and use their
13 professional judgment when confronted with red flag
14 warnings and aberrant patient behaviors in regard to
15 controlled substance prescriptions."

16 Do you agree with that statement?

17 A. Yes, I do.

18 Q. It's also consistent with what DEA put in
19 its pharmacist's manual, that pharmacists must use
20 their professional judgment in determining what
21 prescriptions to fill.

22 Would you agree with that?

23 A. Yes.

24 Q. You understand that pharmacies have sought
25 guidance from DEA from time to time on how to

1 exercise their corresponding responsibility?

2 A. Yes.

3 Q. Pull out, if you would, please, the
4 envelope marked with the letter F, as in fun.

5 MS. SWIFT: This will be Exhibit 14.

6 (Defendant Exhibit 14 was marked
7 for identification.)

8 BY MS. SWIFT:

9 Q. Do you have it, Ms. Ashley?

10 A. Yes, I do.

11 Q. Just to orient you to what this document
12 is, because it's a couple of things, do you see that
13 the first couple of pages is a letter to DEA from
14 the National Association of Chain Drugstores?

15 A. Yes.

16 Q. And then pages -- starting at Page 3 and
17 the rest of the document is a response from DEA.

18 Do you see that?

19 A. Yes.

20 Q. All right. Starting with the letter from
21 the National Association of Chain Drugstores, do you
22 understand that that's a national organization
23 that -- it is what it sounds like it is, it's an
24 association of large chain drugstores like Walgreens
25 and others?

1 A. Yes.

2 Q. The National Association of Chain
3 Drugstores is writing to DEA in July of 2019.

4 Do you see that?

5 A. Yes.

6 Q. And feel free to take your time to look at
7 it if you need to, but my first question is whether
8 you agree with me that, in the second and third
9 paragraph of this letter, the chain drugstores group
10 is asking for DEA's views on whether there are
11 legitimate medical reasons to prescribe so-called
12 "trinity" prescriptions, meaning a combination of an
13 opioid, a benzodiazepine, and a muscle relaxer.

14 Do you see that?

15 A. I'm looking for it.

16 Oh, yeah, I do. I see it.

17 Q. Would you agree with me that that's also
18 known as a "cocktail prescription"?

19 A. Yes, I agree.

20 Q. Then on the next page of the letter from
21 the chain drugstores group, the writer says, "To
22 clear any confusion, we ask that you provide
23 guidance in writing."

24 Do you see that?

25 A. Yes.

1 Q. Okay. Then DEA's response follows that
2 letter from the chain drugstores group.

3 Do you see that?

4 A. Yes.

5 Q. The response is from November of 2019?

6 A. Yes.

7 Q. The -- at the very bottom of the third
8 paragraph, and please feel free to take your time to
9 look at whatever you want to, but do you see at the
10 bottom of the third paragraph, DEA responds to the
11 chain drugstores group that "The DEA lacks the
12 authority to issue guidelines that constitute advice
13 relating to the general practice of medicine"?

14 A. Yes.

15 Q. Do you agree with that statement, based on
16 your experience at DEA?

17 A. I agree with that statement.

18 Q. The next paragraph, second sentence, DEA
19 says to the National Chain Drugstores group,
20 "Federal law and DEA regulations do not impose a
21 specific quantitative minimum or maximum limit on
22 the amount of medication that may be prescribed on a
23 single prescription or the duration of treatment
24 intended with the prescribed controlled substance."

25 Do you see that?

1 A. Yes.

2 Q. Do you agree with those statements?

3 A. I do.

4 Q. Do you agree that federal law and DEA
5 regulations do not impose a limit on the duration of
6 treatment for a prescribed controlled substance?

7 A. I agree with that, yes.

8 Q. And federal law and DEA regulations also
9 do not impose any maximum limit on the amount of
10 medication that may be prescribed on a single
11 prescription.

12 You agree with that as well?

13 A. I agree with that, yes.

14 Q. Then the DEA attaches to its letter a
15 Federal Register notice from 2006 on dispensing
16 controlled substances for the treatment of pain.

17 Do you see that?

18 A. Yes.

19 Q. It's very hard to read in every copy that
20 I could find attached to the letter, and so I have a
21 better copy of it, which is to be in Envelope LL of
22 your box.

23 A. Okay. I'm pulling the document.

24 MS. SWIFT: This will be Exhibit 15.

25

1 (Defendant Exhibit 15 was marked
2 for identification.)

3 BY MS. SWIFT:

4 Q. Do you have it in front of you,
5 Ms. Ashley?

6 A. Yes.

7 Q. Okay. Again, it's a Federal Register
8 notice from September 6, 2006.

9 It says Department of Justice, DEA -- or
10 Drug Enforcement Administration, 21 CFR Part 1306,
11 dispensing controlled substances for the treatment
12 of pain.

13 Did I get all that correctly?

14 A. Yes.

15 Q. Okay. Now, I'd like you to look at
16 Page 3, which has at the top of it 52717.

17 Do you see that?

18 A. Page 3, the 52718?

19 Q. It's 52717 is what I'm going for.

20 A. Oh, okay. I'm sorry. Yes.

21 Q. Do you see the heading at the bottom of
22 the second column, "The Meaning of Legitimate
23 Medical Purpose" of the -- strike that.

24 Do you see the heading at the bottom of
25 the second column that reads, "The Meaning of the

1 Legitimate Medical Purpose Requirement"?

2 A. Yes.

3 Q. Then if you carry that over to the third
4 column, do you see where DEA says, "Federal courts
5 have long recognized that it is not possible to
6 expand on the phrase 'legitimate medical purpose' in
7 the usual course of professional practice in a way
8 that will provide definitive guidelines"?

9 A. Yes, I see that.

10 Q. Do you agree I with that statement, based
11 on your more than 30 years at DEA?

12 A. I agree with that statement.

13 Q. DEA goes on to say, "There are no specific
14 guidelines."

15 Do you see that in the next paragraph?

16 A. I do.

17 Q. Do you agree with that statement?

18 A. I do.

19 Q. Then if you'll turn to the next page, this
20 one is the page heading 52718, and there's a heading
21 "Comments Regarding the Use of Opioids."

22 Do you see that?

23 A. Yes.

24 Q. Under that heading, it says that "DEA
25 recognizes that physicians who specialize in the

1 treatment of pain believe the undertreatment of pain
2 is of paramount concern and a serious public health
3 problem."

4 Do you see that?

5 A. I'm looking for it. Under comments
6 regarding the use of opioids, DEA recognizes --

7 Q. In the second paragraph.

8 A. Second paragraph.

9 Q. "The undertreatment of pain is recognized
10 as a serious public health problem."

11 A. Yes, yes, yes. I see it.

12 Q. Okay. Do you agree with that statement?

13 A. Yes.

14 Q. And still in that first column -- sorry,
15 but on Page 5, so now I believe we should be on
16 52719. In the middle of that first column, do you
17 see the paragraph that says, "First, one cannot
18 provide"?

19 A. Yes.

20 Q. It says, and this is DEA's statement, "One
21 cannot provide an exhaustive and foolproof list of
22 dos and don'ts when it comes to prescribing
23 controlled substances for pain or any other medical
24 purpose."

25 Do you agree with that statement?

1 A. Yes, I do.

2 Q. It goes on to say that "Each patient's
3 medical situation is unique and must be evaluated
4 based on the entirety of the circumstances."

5 Do you agree with that as well?

6 A. Yes, I do.

7 Q. Then on the third column of that same
8 page, the first full paragraph on the page where it
9 says "DEA recognizes," do you see that?

10 A. Yes.

11 Q. It says, "DEA recognizes that the
12 overwhelming majority of American physicians who
13 prescribe controlled substances do so for legitimate
14 medical purposes. In fact, the overwhelming
15 majority of physicians who prescribe controlled
16 substances do so in a legitimate manner and will
17 never warrant scrutiny by federal or state law
18 enforcement officials."

19 Do you agree with that statement?

20 A. Yes, I agree with that statement.

21 Q. In response to questions from doctors,
22 this is the DEA saying we're not going to tell
23 doctors what kinds of prescriptions they can and
24 can't write.

25 Would you agree with that?

1 A. Yes.

2 Q. In response to questions from
3 pharmacies --

4 MR. WEINBERGER: Excuse me, I was on mute,
5 Kate.

6 I want to interpose an objection to that
7 prior question. Thanks.

8 BY MS. SWIFT:

9 Q. In response to questions from pharmacies,
10 the DEA also said we're not going to tell
11 pharmacists what prescriptions they can and can't
12 fill.

13 Would you agree with that?

14 MR. WEINBERGER: Objection.

15 MR. SOBOTKIN: Objection.

16 THE WITNESS: Can you repeat that? DEA is
17 not going to tell --

18 BY MS. SWIFT:

19 Q. -- pharmacists what prescriptions they can
20 and can't fill.

21 A. That's correct.

22 MR. WEINBERGER: Objection.

23 BY MS. SWIFT:

24 Q. Excuse me.

25 A. I mean, I should say I agree.

1 Q. Thank you.

2 Ms. Ashley, has the DEA ever imposed
3 limits on the amount of prescription opioids that
4 may be prescribed or dispensed for a patient in your
5 experience?

6 MR. SOBOTKIN: Objection to form.

7 THE WITNESS: Not that I'm aware of.

8 BY MS. SWIFT:

9 Q. In your experience, has DEA ever imposed
10 any limit on the daily dose of a prescription opioid
11 that may be prescribed or dispensed for a patient?

12 A. Not in my experience.

13 Q. In your experience, has DEA ever imposed
14 any limits on the strength of a prescription opioid
15 medication that may be prescribed or dispensed for a
16 patient?

17 A. Not in my experience.

18 Q. In your experience, has DEA ever
19 prohibited the prescribing or dispensing of
20 prescription opioids in combination with other
21 medications?

22 A. Not in my experience.

23 Q. Would you agree with me, Ms. Ashley, that
24 people suffering from pain should have access to
25 prescription opioid medication if a doctor

1 determines that that's an appropriate treatment?

2 MR. WEINBERGER: Objection.

3 THE WITNESS: I agree with that.

4 BY MS. SWIFT:

5 Q. If you'll pull out the envelope with the
6 letter M, as in Mary. This may have been one that I
7 accidentally marked before.

8 A. Would this be an okay time to break?

9 MS. SWIFT: This would be a perfect time
10 to break.

11 THE WITNESS: And when I come back, I'll
12 come to M. It should be ten minutes?

13 MS. SWIFT: That's fine. Let's make it
14 15, just to be safe.

15 THE WITNESS: Okay. Okay. Thank you.

16 THE VIDEOGRAPHER: Off the record, 9:43.

17 (Whereupon, a recess was taken
18 from 9:43 a.m. to 10:01 a.m.)

19 THE VIDEOGRAPHER: Okay. We're on the
20 record at 10:01.

21 BY MS. SWIFT:

22 Q. Ms. Ashley, before we broke, I asked you
23 to pull out the envelope with letter M, as in Mary,
24 on it.

25 Do you have that in front of you?

1 A. Yes.

2 MS. SWIFT: I've marked this one as
3 Exhibit 16 to Ms. Ashley's deposition.

4 (Defendant Exhibit 16 was marked
5 for identification.)

6 MR. WEINBERGER: What's the number?

7 MS. SWIFT: 16.

8 MR. WEINBERGER: 16. Okay. Thank you.

9 BY MS. SWIFT:

10 Q. Ms. Ashley, do you recognize this letter
11 as one that you wrote in April of 2017?

12 A. Yes.

13 Q. You were responding to concerns from a
14 pain patient; is that correct?

15 A. Yes.

16 Q. In the first paragraph of your letter, you
17 wrote, "Thank you for your letter dated
18 January 23rd, 2017, to the Drug Enforcement
19 Administration. You indicated how the rescheduling
20 of hydrocodone combination products requires you to
21 now undergo expensive random drug testing, limit you
22 to a 90-day maximum supply with no refills, and
23 requires you to see your practitioner for each new
24 prescription. The DEA appreciates the opportunity
25 to address your concerns."

1 Did I read all of that correctly?

2 A. Yes.

3 Q. Do you understand, based on your
4 experience at DEA in this time frame, that pain
5 patients were having a harder time getting access to
6 pain medication?

7 A. I was -- yeah, I did learn that, yes.

8 Q. Pain patients like this one were writing
9 to DEA with their concerns about getting access to
10 necessary pain medication; is that true?

11 A. Yes, that's true.

12 Q. In the second paragraph of your letter,
13 you wrote that "The responsibility for the proper
14 prescribing and dispensing of controlled substances
15 is on the prescribing practitioner," correct?

16 A. That's correct.

17 Q. Then you go on to say something that we've
18 seen before in other DEA documents, that "Federal
19 law and DEA regulations do not impose a specific
20 quantitative minimum or maximum limit on the amount
21 of medication that can be prescribed on a single
22 prescription or the duration of treatment intended
23 with the prescribed controlled substance," correct?

24 A. That's correct.

25 Q. And then if you'll turn, please, to Page 2

1 of your letter, at the top of the page, you said,
2 "Individual practitioners must determine on their
3 own, based on sound medical judgment and in
4 accordance with established medical standards,
5 whether it is appropriate to issue multiple
6 prescriptions and how often to see their patients."

7 Do you agree with that statement that you
8 made? Do you agree with that today?

9 A. Yes, I do.

10 Q. Do you agree that that's true with respect
11 to any prescription a doctor writes?

12 MR. WEINBERGER: Objection.

13 THE WITNESS: Yes, I agree.

14 MS. SWIFT: That is all of the questions
15 that I have at this time. We will reserve the
16 balance of our time for redirect, any necessary
17 redirect.

18 MR. WEINBERGER: Thank you.

19 EXAMINATION

20 BY MR. WEINBERGER:

21 Q. Ms. Ashley, my name is Peter Weinberger.
22 And I'm privileged to represent the plaintiffs, who
23 in this particular case are Lake County, Ohio, and
24 Trumbull County, Ohio. And to the extent that this
25 deposition might be used beyond this case, I'm also

1 representing the plaintiffs' executive committee on
2 behalf of several thousand political subdivisions
3 around the country who have brought cases against
4 these five pharmacies.

5 So I have an opportunity now to ask you
6 questions, and so I'm going to go right to it.

7 A. Okay.

8 Q. First of all, you explained to Ms. Swift
9 your extensive experience at the DEA. And on behalf
10 of our clients, my clients, I want to thank you for
11 your service. And I thank you for your being here
12 today to testify.

13 You have -- you are appearing today,
14 Ms. Ashley, because you were subpoenaed by the
15 defendant retail pharmacies in this case, Walgreens,
16 CVS, Walmart, Rite Aid, and Giant Eagle, correct?

17 A. Correct.

18 Q. And you are represented -- even though you
19 no longer work at the DEA, you're represented by
20 counsel for the Department of Justice, correct?

21 A. Correct.

22 Q. Each of these five --

23 MR. SOBOTKIN: I'm sorry, Peter. Let me
24 just note for the record, my appearance is on
25 behalf of the United States Drug Enforcement

1 Administration in Ms. Ashley's capacity as a
2 former DEA employee.

3 MR. WEINBERGER: Thank you for that
4 explanation, Mr. Sobotkin. I appreciate it.

5 BY MR. WEINBERGER:

6 Q. So each of these five defendants, you are
7 aware, are registered with the Drug Enforcement
8 agency to distribute and dispense opioid
9 prescription products, true?

10 A. True.

11 MS. SWIFT: Object to form.

12 BY MR. WEINBERGER:

13 Q. Did you say correct?

14 A. I said, yes, true.

15 Q. Okay. And by the way, the questions that
16 I'm going to ask you today, in accordance with the
17 parameters that have been set by the Department of
18 Justice, are about your own personal knowledge as a
19 long-time employee of the Drug Enforcement agency.

20 Based upon your knowledge and experience
21 at the DEA, is it true that these defendants,
22 Walgreens, CVS, Walmart, Rite Aid, and Giant Eagle,
23 are required to, quote, "provide effective controls
24 and procedures to guard against the theft and
25 diversion of controlled substances," end quote?

1 A. Yes, that's correct.

2 Q. And I know you're well familiar with it,
3 but -- so somebody has got to go on mute because I
4 just got some feedback.

5 I know you're well familiar with it, but
6 let me mark as Plaintiffs' Exhibit Number 1,
7 1301.71, which is in an envelope. It's marked
8 P-GEN-00187.

9 A. In the same group?

10 Q. So it's in a separate packet.

11 A. Oh, okay.

12 Q. Okay. So what you did -- what we did is
13 you've got a packet of exhibits that we sent you
14 versus those that the defendants sent you.

15 A. I got it.

16 MR. SOBOTKIN: What is the Bates number
17 again?

18 MR. WEINBERGER: So this is P-GEN-00187.

19 THE WITNESS: I have it.

20 MR. WEINBERGER: And we're going to mark
21 this as Plaintiffs' Exhibit Number 1.

22 (Plaintiff Exhibit 1 was marked
23 for identification.)

24 MR. WEINBERGER: And, Jim, if you would
25 focus in on that very first paragraph for us.

1 Great.

2 BY MR. WEINBERGER:

3 Q. So what I just asked you about is what's
4 contained in the federal regulations, which were
5 enacted as a result of the Controlled Substances
6 Act.

7 And it says in Section (a), "All
8 applicants and registrants shall provide effective
9 controls and procedures to guard against theft and
10 diversion of controlled substances."

11 Can you highlight that, Jim, please.

12 So this is the regulation that governs
13 this, correct, Ms. Ashley?

14 A. Correct.

15 Q. And this is an obligation on a number of
16 registrants, but particularly in this case, it's an
17 obligation of these five defendants, these five
18 corporate defendants, to provide effective controls
19 and procedures to guard against theft and diversion
20 of controlled substances, correct?

21 A. Correct.

22 Q. Just one second here, please.

23 And each of these retail pharmacies, in
24 your experience, should know that controlled
25 substances like opioid prescriptions can be

1 addictive, true?

2 A. Yes, I agree with that.

3 MR. WEINBERGER: You can take down this
4 exhibit, Jim. Thanks.

5 BY MR. WEINBERGER:

6 Q. And each of these retail pharmacy
7 companies should know that opioid prescription drugs
8 can be and often are used for nonmedical purposes,
9 true?

10 A. Yes.

11 Q. They should all know that opioid
12 prescription drugs can often be diverted, true?

13 A. True, yes.

14 Q. And by "diverted," we mean they can be
15 stolen within the pharmacies, by pharmacy employees
16 or others, or it can be used by patients or
17 individuals in ways not consistent with a legitimate
18 medical use, true?

19 A. Yes.

20 Q. And if these five retail pharmacy
21 companies have been registrants for 30 years or
22 more, they should have been well aware of these
23 risks associated with opioid prescription
24 medications for that entire period of time, true?

25 MS. SWIFT: Object to the form.

1 THE WITNESS: I agree with that.

2 BY MR. WEINBERGER:

3 Q. You agree with that?

4 A. Yes, I agree with that.

5 Q. Okay. And, frankly, that's why the
6 Controlled Substances Act was enacted. It was --
7 its purpose was to set up a closed system where drug
8 companies, including the defendant pharmacies, were
9 required to follow the rules to minimize the risk of
10 misuse and diversion of drugs like opioid
11 prescriptions, correct?

12 A. Correct.

13 MS. SWIFT: Objection, calls for a legal
14 conclusion.

15 BY MR. WEINBERGER:

16 Q. Addiction, misuse, and diversion of opioid
17 prescriptions pose a significant risk to the health
18 and safety of our communities across the nation.

19 Do you agree with that?

20 A. I agree with that.

21 Q. Diversion of opioid prescriptions is a
22 danger to the health and welfare of our cities and
23 counties across the country.

24 Do you agree with that?

25 A. I agree with that.

1 Q. Now, it's well-known, and I assume you
2 know, Ms. Ashley, that all five of these defendants
3 are multibillion-dollar operations, correct?

4 A. Oh, do I know that? Yes.

5 MS. SWIFT: Object to the form.

6 BY MR. WEINBERGER:

7 Q. Yes?

8 A. Yes.

9 Q. And, in fact, Walmart, the defendant
10 Walmart in this case is the largest company in our
11 country by any measure, Fortune 500 or otherwise.

12 Do you agree with that?

13 MS. SWIFT: Object to form, foundation.

14 THE WITNESS: I agree with that.

15 BY MR. WEINBERGER:

16 Q. CVS and Walgreens are in the top ten of
17 Fortune 500 companies in total annual revenues.

18 Do you agree with that?

19 A. I --

20 MS. SWIFT: Object to the form,
21 foundation.

22 MR. SOBOTKIN: It's outside the scope of
23 the Touhy. I'm going to request that the
24 witness not answer related to the business
25 operations of these companies.

1 BY MR. WEINBERGER:

2 Q. Well, you are aware, based on your
3 experience, that these large corporations have or
4 should have regulatory compliance departments,
5 correct?

6 MS. SWIFT: Object to the form, outside
7 the scope and foundation.

8 BY MR. WEINBERGER:

9 Q. Go ahead. You can answer.

10 A. Oh, am I aware? Yes.

11 Q. They have governmental affairs
12 departments?

13 MS. SWIFT: Same objections.

14 Sorry, I think David was trying to object
15 as well.

16 MR. SOBOTKIN: Yeah, I'm sorry, we're
17 talking over each other.

18 It's outside the scope of the Touhy
19 authorization. You should not answer.

20 THE WITNESS: Don't answer. Okay.

21 BY MR. WEINBERGER:

22 Q. Well, as part of your role in the
23 diversion section of the DEA and in some of the
24 documents which -- including the stakeholders
25 documents, didn't you become aware of the fact that

1 each of these defendants, either individually or
2 through trade organizations, have governmental
3 affair departments that interact with governmental
4 officials?

5 MS. SWIFT: Still outside the scope.

6 Objection.

7 MR. SOBOTKIN: Same objection. You should
8 not answer in the general.

9 MR. WEINBERGER: Well, I'm just saying as
10 a matter of her own personal knowledge.

11 BY MR. WEINBERGER:

12 Q. Isn't that true?

13 MS. SWIFT: Same objection. It's outside
14 the scope.

15 MR. SOBOTKIN: Agreed.

16 MR. WEINBERGER: Are you instructing her
17 not to answer, David?

18 MR. SOBOTKIN: I'm not instructing her not
19 to answer. It's outside the scope.

20 BY MR. WEINBERGER:

21 Q. Okay. Would you agree from your own
22 personal knowledge in all your years at the DEA,
23 that the prescription drug dispensing business is a
24 highly profitable business for these companies?

25 MS. SWIFT: Same objection. It's outside

1 the scope.

2 MR. SOBOTKIN: Objection. It's outside
3 the scope. Direct the witness not to answer.

4 BY MR. WEINBERGER:

5 Q. Well, would you agree that the opioid
6 distribution and dispensing business that these
7 defendants operate for profit is a highly regulated
8 business?

9 MS. SWIFT: Outside the scope.

10 THE WITNESS: Answer?

11 MR. SOBOTKIN: You may answer as it
12 pertains to the DEA.

13 THE WITNESS: Is it regulated? Yes, I
14 agree.

15 BY MR. WEINBERGER:

16 Q. You agree that it's a highly regulated
17 business? That is, opioid distribution and
18 dispensing is a highly regulated business?

19 MS. SWIFT: I'm going to object to the
20 extent the question relates to distribution as
21 opposed to dispensing. That's outside the
22 scope of this deposition.

23 MR. SOBOTKIN: Objection, outside the
24 scope on "distribution"; objection, asked and
25 answered, as to the balance.

1 MR. WEINBERGER: All right. Well, I want
2 to make sure the record is clear, and I'll take
3 out distribution.

4 BY MR. WEINBERGER:

5 Q. Would you agree that the opioid dispensing
6 business that these defendants operate for profits
7 is a heavily regulated business?

8 MS. SWIFT: Object to the characterization
9 of the question about profits.

10 BY MR. WEINBERGER:

11 Q. You can answer.

12 MS. SWIFT: Outside the scope.

13 THE WITNESS: Yes, I agree.

14 BY MR. WEINBERGER:

15 Q. And would you agree that these defendants
16 have an obligation to comply with the Controlled
17 Substances Act and its regulations?

18 A. Yes, I agree.

19 Q. Would you agree they have an obligation to
20 comply with state laws on controlled substances?

21 A. Yes, I agree.

22 Q. Would you agree that these defendants have
23 an obligation to keep current on both the federal
24 and state laws and regulations associated with the
25 dispensing of controlled substances?

1 A. Yes, I agree.

2 Q. They have an obligation to read and follow
3 the regulations, true?

4 A. Yes, I agree with that.

5 Q. These companies have an obligation to read
6 and know the developments in the laws and
7 regulations, as they may be modified or changed over
8 the years?

9 A. I agree with that.

10 Q. And the DEA has, for the last 30 years,
11 helped the defendants to know the law and
12 regulations by various means, true?

13 MS. SWIFT: Objection, outside the scope,
14 foundation.

15 MR. SOBOTKIN: Objection, outside the
16 scope, as the witness is here to testify in her
17 personal capacity, not as on behalf of the DEA.

18 BY MR. WEINBERGER:

19 Q. So, with respect to your personal
20 knowledge over all the years that you worked at the
21 DEA, would you agree that the DEA helps the
22 defendants know the law and regulations associated
23 with dispensing opioid products?

24 A. Yes, I agree.

25 Q. The DEA sends out advisory letters, true?

1 A. Correct.

2 MS. SWIFT: Objection.

3 BY MR. WEINBERGER:

4 Q. Go ahead. You can answer.

5 A. Yes, true.

6 Q. The DEA publishes developments in the
7 regulations on dispensing on the DEA website, true?

8 A. Yes, they do.

9 Q. The DEA holds meetings with these
10 defendant companies from time to time to explain
11 issues associated with regulations about dispensing,
12 true?

13 A. Yes, that's true.

14 Q. The DEA publishes in the Federal Register
15 the results of enforcement actions brought against
16 companies that violate the dispensing regulations of
17 the DEA, of the Controlled Substances Act?

18 MS. SWIFT: Objection, outside the scope.

19 THE WITNESS: Yes, that's true.

20 MR. SOBOTKIN: Same objection.

21 BY MR. WEINBERGER:

22 Q. That's true.

23 The DEA puts out information about final
24 adjudications associated with enforcement actions
25 brought against pharmaceutical companies like

1 Walgreens and CVS, true?

2 MS. SWIFT: Objection, this is wildly
3 outside the scope.

4 MR. WEINBERGER: It's not very wild,
5 Ms. Swift.

6 BY MR. WEINBERGER:

7 Q. With respect to dispensing enforcement
8 actions that have been brought against CVS and
9 Walgreens and Walmart and Rite Aid, isn't it true
10 that the DEA publishes adjudications, information
11 about those enforcement actions?

12 MS. SWIFT: Objection, outside the scope.
13 It was also covered in the last deposition of
14 Ms. Ashley and, therefore, is doubly outside
15 the scope.

16 BY MR. WEINBERGER:

17 Q. Do you agree with that statement?

18 MR. SOBOTKIN: Answer if you have an
19 understanding in your personal recollection.

20 THE WITNESS: In my personal recollection,
21 yes.

22 BY MR. WEINBERGER:

23 Q. And the reason for publishing this
24 information is not only to explain what happened
25 with respect to a particular defendant but also to

1 give guidance to other of the defendants who may not
2 have been involved in that particular action,
3 correct?

4 MR. SOBOTKIN: Objection. You can't
5 answer on behalf of what DEA is intending to do
6 or not intending to do.

7 If you have a personal understanding, you
8 can answer the question.

9 THE WITNESS: Okay. So I need you to
10 repeat the question. They publish it in order
11 to provide guidance?

12 BY MR. WEINBERGER:

13 Q. I'll just restate it.

14 With respect to information that's
15 published about adjudications or enforcement actions
16 and their conclusion, isn't -- from your own
17 personal knowledge, doesn't the DEA put out that
18 information not only to tell people what happened
19 with respect to a particular defendant, but also to
20 give guidance to other defendants?

21 A. Yes, I think it's to help, yes.

22 Q. The -- from your experience, were you
23 familiar, generally speaking, with the CVS Holiday
24 enforcement case?

25 MS. SWIFT: Objection, outside the scope.

1 THE WITNESS: I'm aware of it, yes.

2 BY MR. WEINBERGER:

3 Q. And you're aware that that -- that the
4 decision in 2012 was published both on the DEA
5 website and in the Federal Register?

6 MR. BUSH: Object to this. This is Graham
7 Bush on behalf of CVS. This is way outside the
8 scope. There is nothing in the Touhy
9 authorization that applies to investigations.

10 BY MR. WEINBERGER:

11 Q. So I'm not going to get into a colloquy
12 with counsel and their speaking objections.

13 But would you agree that the CVS Holiday
14 enforcement case included or really centered around
15 dispensing issues associated with CVS's conduct?

16 MR. BUSH: Objection, foundation, and
17 outside the scope.

18 MR. SOBOTKIN: Objection, outside the
19 scope of the Touhy authorization, and direct
20 the witness not to answer the particulars about
21 what may have been at issue in a particular
22 enforcement action.

23 MR. WEINBERGER: Well, Mr. Sobotkin, the
24 witness has testified that the publishing of
25 these adjudications serve as guidance to other

1 defendants with respect to -- and in this case
2 it involved dispensing issues.

3 So since the Touhy authorization
4 specifically talks about her testimony about
5 dispensing issues and what was -- you know,
6 what advice was given, I mean, this is, with
7 all due respect, I think, clearly within the
8 scope of the Touhy letter.

9 MR. SOBOTKIN: The role of guidance, you
10 know, I did not object and did not direct her
11 not to answer on that generalized basis. And
12 to the extent that there is an enforcement
13 action that's been published in the Federal
14 Register, it speaks for itself.

15 MR. WEINBERGER: Okay. Well, I get that,
16 but I guess I'm wondering why I'm not allowed
17 to ask her about it.

18 MR. SOBOTKIN: We were very clear in the
19 negotiations that led to the issuance of the
20 Touhy letter that specific investigations,
21 specific matters, specific enforcement actions
22 would not be permitted as part of the Touhy
23 authorization.

24 BY MR. WEINBERGER:

25 Q. Okay. Well, do you agree based upon your

1 experience that, Ms. Ashley, that these five
2 defendant pharmacy companies are sophisticated in
3 following the requirements of the CSA regulations
4 and that it's a part of their companies' businesses
5 to keep abreast of the government regulations?

6 MR. SOBOTKIN: Object to the word
7 "sophisticated."

8 BY MR. WEINBERGER:

9 Q. Go ahead. You can answer.

10 A. Yes, I do agree.

11 Q. Now, let me have you pull out P-GEN-00216.

12 A. I have it.

13 Q. Thank you.

14 MR. WEINBERGER: We're going to mark this
15 as Plaintiffs' Exhibit Number 2.

16 (Plaintiff Exhibit 2 was marked
17 for identification.)

18 BY MR. WEINBERGER:

19 Q. And we've put the first page of Exhibit 2
20 up on the screen, Ms. Ashley.

21 Can we agree that this is the DEA's
22 website publication of the case entitled
23 Holiday CVS LLC?

24 MR. BUSH: Objection, outside -- sorry,
25 didn't mean to interrupt you, Pete. Are you

1 done?

2 I have an objection, outside the scope.

3 MR. SOBOTKIN: I'm going to just object on
4 foundation, but you can answer, if you can.

5 THE WITNESS: I agree that it is.

6 BY MR. WEINBERGER:

7 Q. And in the course of your work at the DEA,
8 have you had an opportunity to refer to this case
9 from time to time?

10 A. I don't recall. I'd say it's likely.

11 Q. And do you -- is it your understanding
12 that this case lays out information regarding red
13 flags that a pharmacy should be looking for in
14 fulfilling the corresponding responsibility required
15 by the federal regulations?

16 MR. SOBOTKIN: Objection.

17 MR. BUSH: Objection, foundation, scope.
18 Mischaracterizes the case.

19 THE WITNESS: Yes, I believe it does.

20 BY MR. WEINBERGER:

21 Q. And has this case been used often in
22 discussions that you have had or been involved in
23 with pharmacies that include CVS and other
24 pharmacies regarding how pharmacies should utilize
25 red flags in fulfilling their corresponding

1 responsibility?

2 MR. BUSH: Objection.

3 THE WITNESS: I don't recall. But it's
4 likely.

5 BY MR. WEINBERGER:

6 Q. Likely, thank you.

7 Would you also pull out and we will mark
8 as Exhibit 3 P-GEN-00215.

9 (Plaintiff Exhibit 3 was marked
10 for identification.)

11 BY MR. WEINBERGER:

12 Q. This will be marked as Exhibit 3. This is
13 the case of the East Main Street Pharmacy from 2010.

14 Are you aware of this case?

15 A. I don't recall this one.

16 Q. Okay. This is -- actually involves an
17 Ohio pharmacy. But can we agree that, at least from
18 what you can see on Exhibit 3, that this is another
19 case that's on the DEA website and available to be
20 reviewed by the defendants in this case?

21 MR. SOBOTKIN: Objection, foundation.

22 THE WITNESS: Yes, I agree with that.

23 BY MR. WEINBERGER:

24 Q. All right. Would you agree, in terms of
25 your own personal experience, Ms. Ashley -- you can

1 take that down, Jim. Thanks.

2 Would you agree that these defendant
3 pharmacies are required to develop policies to train
4 pharmacists to comply with the CSA regulations?

5 A. Are they required to develop policies?

6 Q. Yes, ma'am.

7 A. I'm trying to think, is that a federal
8 regulation?

9 Q. Well, as part of their obligation under
10 1301.71 to provide effective controls of procedures
11 to guard against theft and diversion, would you
12 agree that these defendant pharmacies corporately
13 have an obligation to develop policies to train
14 pharmacists to comply with the regulations?

15 A. Yeah, I agree --

16 MR. BUSH: Objection.

17 THE WITNESS: -- as part of that process,
18 yes.

19 BY MR. WEINBERGER:

20 Q. Would you agree that the defendants are
21 required to develop and implement systems to provide
22 the necessary tools for their pharmacists to comply
23 with the CSA regulations?

24 MS. SWIFT: Objection.

25 MR. SOBOTKIN: Objection.

1 MR. BUSH: Objection.

2 THE WITNESS: Yes.

3 BY MR. WEINBERGER:

4 Q. Would you agree that the defendants
5 pharmacist training and the tools that they provide
6 must be designed to provide effective controls and
7 procedures to prevent the theft and diversion of
8 opioids?

9 A. You said they "must be designed"?

10 Q. Yes.

11 A. Yeah, I believe that's an obligation.

12 Q. Because if the training and the tools used
13 by the defendant corporations are not adequate, we
14 run the risk of opioid pills getting into the wrong
15 hands and leading to diversion, correct?

16 A. That's correct.

17 Q. And I think you already agree with me that
18 diversion is dangerous to the health and safety of
19 our neighborhoods, correct?

20 A. That's correct.

21 Q. And diversion burdens our court systems,
22 our law enforcement community, and the social fabric
23 of our communities, agreed?

24 MS. SWIFT: Objection, outside the scope.

25 MR. BUSH: And foundation.

1 BY MR. WEINBERGER:

2 Q. Do you agree with that?

3 A. Yes, I agree.

4 Q. And if you would go back to Defendants'
5 Exhibit 5, which Ms. Swift showed you, which was
6 your testimony before the Judiciary Committee of the
7 United States Senate from December 12, 2017, it was
8 interesting to me that Ms. Swift didn't ask you to
9 read a couple of sections when she was examining
10 you.

11 So do you have Exhibit 5 in front of you,
12 Defendants' Exhibit 5?

13 A. I was looking at it on the screen. Hold
14 on.

15 Q. Sure. You can look at it on the screen if
16 you want to, but whatever is easiest for you.

17 A. Yes, I'm looking at it on the screen. I'm
18 sure it's around here somewhere.

19 Q. Okay. So we're going to go to the very
20 next page, and this is the beginning of your
21 testimony where you thank or you address
22 Chairman Grassley and Ranking Member Feinstein, but
23 I'm interested in the second sentence of your
24 testimony.

25 It says, "The overprescribing and abuse of

1 controlled prescription drugs is inextricably linked
2 with the threat the United States faces from the
3 trafficking of heroin, illicit fentanyl, and
4 fentanyl analogues."

5 That was your testimony, correct?

6 A. Yes.

7 Q. That's what we -- what's commonly known in
8 the DEA agency as the gateway effect, from
9 prescription opioid drugs into illegal drugs,
10 correct?

11 MR. SOBOTKIN: Objection.

12 MS. SWIFT: Objection.

13 MR. SOBOTKIN: From your personal
14 recollection, you can answer.

15 MS. SWIFT: It's outside the scope.

16 THE WITNESS: From personal recollection,
17 yes.

18 BY MR. WEINBERGER:

19 Q. But by "gateway," what that means is that
20 the overprescribing and abuse of controlled
21 prescription drugs is well-known to lead -- as you
22 said, inextricably linked with the threat of illicit
23 drugs in our country, correct?

24 MS. SWIFT: Objection, outside the scope,
25 foundation.

1 THE WITNESS: Correct.

2 BY MR. WEINBERGER:

3 Q. And the second paragraph says that drug
4 overdoses suffer -- I'll tell you what. Why don't
5 you read for us into the record what you stated in
6 the second paragraph.

7 A. "Drug overdose" --

8 Q. Go ahead.

9 A. "Drug overdoses, suffered by family,
10 friends, neighbors, and colleagues, are now the
11 leading cause of injury-related death in the
12 United States, eclipsing deaths from motor-vehicle
13 crashes or firearms. According to initial estimates
14 provided by the Center for Disease Control and
15 Prevention (CDC), there were more than 64,000
16 overdose deaths in 2016, approximately 175 per day.
17 Over 34,500 (54 percent) of these deaths were caused
18 by prescription opioids, fentanyl, or fentanyl
19 analogues. The sharpest increase in drug overdose
20 deaths from 2015 to 2016 was fueled by a surge in
21 fentanyl and fentanyl analogue (synthetic opioids)
22 overdoses."

23 Q. Then the -- you go to say in the next
24 paragraph, and I'll read it for you, "In 2016,
25 almost 3.4 million Americans age 12 or older

1 reported misusing prescription pain relievers within
2 the past month. This makes prescription opioid
3 misuse more common than use of any category of
4 illicit drug in the United States except for
5 marijuana."

6 Did I read that correctly?

7 A. Yes.

8 Q. Is it fair to say that this is a
9 description of an opioid epidemic?

10 A. That's fair to say.

11 Q. And is it fair to say that this opioid
12 epidemic, from your knowledge of the DEA, had been
13 going on since the early 2000s?

14 A. Yes, it's --

15 MS. SWIFT: Object to form, foundation.

16 BY MR. WEINBERGER:

17 Q. The answer is yes, right?

18 A. It's fair to say that, yes.

19 Q. Yes.

20 And is it fair to say that any registrant,
21 including these five defendants, from your
22 experience, knew or should have known of the raging
23 epidemic in opioid prescription pills from the early
24 2000s on?

25 MS. SWIFT: Object to the form,

1 foundation.

2 BY MR. WEINBERGER:

3 Q. Go ahead. You can answer.

4 A. I believe they knew or should have known.

5 Q. And when your -- and as registrants and
6 dispensers of prescription opioid medications,
7 shouldn't the conduct of these pharmacies have
8 been -- shouldn't they have taken into effect the
9 fact that there was an ongoing epidemic of
10 prescription opioid pills in this country?

11 MS. SWIFT: Object to the form.

12 THE WITNESS: That would be my
13 expectation, yes.

14 BY MR. WEINBERGER:

15 Q. And because of the danger and risk of
16 prescription opioid pills and the -- and its effect
17 on the epidemic, would you agree that these pharmacy
18 companies should have been extremely vigilant in
19 ensuring that their employees complied with the
20 Controlled Substances Act?

21 MR. SOBOTKIN: Object to form.

22 THE WITNESS: I believe they should have
23 been vigilant, yes.

24 BY MR. WEINBERGER:

25 Q. Right.

1 We have a -- we have a saying in the law
2 that as the danger of somebody's conduct increases,
3 the degree of vigilance required of the person who
4 knows of that danger and who might contribute to it
5 goes up.

6 Do you agree with that general concept?

7 MS. SWIFT: Object to the form.

8 BY MR. WEINBERGER:

9 Q. Do you agree?

10 A. I agree with that general concept, yes.

11 Q. In your testimony, if we go on to, at the
12 bottom of Page 3 -- or, I'm sorry, to Page 3 of your
13 testimony, right, Page 3, next page. There we go.
14 There's a section in your testimony about
15 Prescription Drug Monitoring Programs.

16 A. Yes.

17 Q. And I'll read it for you. You describe
18 them as "Prescription Drug Monitoring Programs
19 (PDMPs) are state-run electronic database systems
20 used by practitioners, pharmacists, medical and
21 pharmacy boards, and law enforcement, but their
22 organization and operation varies according to state
23 law, including who can access information contained
24 in the PDMP database."

25 Did I read that correctly?

1 A. Yes.

2 Q. So these PDMPs -- and by the way, you're
3 familiar with the Ohio PDMP, which is the acronym
4 OARRS? Are you familiar with OARRS?

5 A. No.

6 Q. Maybe not. Okay. Well, Ohio has one and
7 has had one since 2006, and that was implemented
8 more significantly in 2011. That's our -- Ohio's
9 PDMP.

10 So PDMPs, in general, according to what
11 you know about them, are based upon dispensing data,
12 correct?

13 MS. SWIFT: Object to the form.

14 THE WITNESS: Correct.

15 BY MR. WEINBERGER:

16 Q. And the dispensing -- and the PDMPs, the
17 way that they work is they analyze the dispensing
18 data and use software algorithms to create either
19 warning signs or signals to their user about
20 potential red flags that might be associated with
21 either a patient, a prescriber, or a pharmacist,
22 true?

23 A. True.

24 MS. SWIFT: Objection, mischaracterizes
25 the facts.

1 MR. SOBOTKIN: And object to form,
2 foundation.

3 BY MR. WEINBERGER:

4 Q. You did say "true," correct? That you
5 agreed?

6 A. Yes.

7 Q. Okay. And the experience with these PDMPs
8 is that this dispensing data has a lot of important
9 information that can actually, if properly analyzed,
10 be utilized to assist a pharmacist in identifying
11 red flags associated with a particular prescription,
12 true?

13 A. It helps to assist, yes.

14 Q. Right. And I'm assuming -- well, maybe I
15 shouldn't assume.

16 You're aware of the CSA regulation that
17 requires the defendants to store their dispensing
18 data in their own systems?

19 MS. SWIFT: Object to the form,
20 foundation.

21 THE WITNESS: Yes.

22 BY MR. WEINBERGER:

23 Q. And you're aware that that dispensing
24 data, for most of these large corporations, are kept
25 in central locations and are retrievable through

1 various computerized means?

2 MS. SWIFT: Object to the form.

3 THE WITNESS: Yes.

4 BY MR. WEINBERGER:

5 Q. And are you aware of the fact that these
6 corporations' dispensing data databases, if accessed
7 properly with proper software, could do many of the
8 same things that a PDMP does? In other words,
9 identify red flags that would be associated with the
10 data?

11 MS. SWIFT: Object to the form.

12 MR. BUSH: Objection.

13 MR. SOBOTKIN: Same objection, calls for
14 speculation.

15 BY MR. WEINBERGER:

16 Q. Do you agree with that?

17 A. I believe that could be done, yes.

18 Q. And can we agree, generally -- and we will
19 get into the red flag systems a little bit later --
20 but can we agree, generally, that many of the red
21 flags associated with either a prescriber profile or
22 a patient profile can use data to identify potential
23 red flags?

24 MS. SWIFT: Object to the form.

25 THE WITNESS: Yes.

1 BY MR. WEINBERGER:

2 Q. And in terms of the pharmacy companies'
3 obligation to establish appropriate controls to
4 guard against diversion, it would be reasonable to
5 expect the pharmacies to access their own databases
6 to look for red flags, right?

7 MS. SWIFT: Object to the form.

8 MR. BUSH: Objection.

9 THE WITNESS: That is reasonable, yes.

10 BY MR. WEINBERGER:

11 Q. And particularly, if a pharmacy company is
12 being vigilant in the face of a raging prescription
13 opioid pill epidemic, access to that database of
14 information would be important, correct?

15 MS. SWIFT: Object to the form.

16 THE WITNESS: I agree it would be
17 important, yes.

18 BY MR. WEINBERGER:

19 Q. So you testified earlier, in response to
20 Ms. Swift's questioning, that -- well, let me ask
21 you this.

22 Is it your understanding, based upon
23 your years of experience, that a pharmacy and its
24 pharmacists have a corresponding responsibility, in
25 addition to the prescribers' responsibility, to fill

1 only opioid prescriptions that are issued for a
2 legitimate medical purpose?

3 MS. SWIFT: Object to the form.

4 THE WITNESS: That is my understanding.

5 BY MR. WEINBERGER:

6 Q. Okay. And that's contained -- that
7 requirement is contained in the regulations. Let me
8 see if I can get them out. I've got too many papers
9 here, Ms. Ashley. Sorry. Here we go.

10 130 -- sorry.

11 1306.04, which is in your packet of
12 materials P-GEN-00174.

13 MR. WEINBERGER: And we're going to mark
14 it as Plaintiffs' Exhibit 3 [sic].

15 (Plaintiff Exhibit 4 was marked
16 for identification.)

17 THE WITNESS: I have it.

18 MR. WEINBERGER: And if you could
19 highlight, Jim, that very first paragraph and
20 blow it up. Right.

21 BY MR. WEINBERGER:

22 Q. So this, this says, "A prescription for a
23 controlled substance to be effective must be issued
24 for a legitimate medical purpose by an individual
25 practitioner acting in the usual course of his

1 professional practice. The responsibility for the
2 proper prescribing and dispensing of controlled
3 substances is upon the prescribing practitioner, but
4 a corresponding responsibility rests with the
5 pharmacist who fills the prescription."

6 Have I read that correctly?

7 A. Yes.

8 Q. And that corresponding responsibility is
9 something that should be well-known to these
10 defendant pharmacy companies ever since they first
11 got registered, right?

12 A. I imagine so, yes.

13 Q. And a prescription for a controlled
14 substance may only be filled by a pharmacist acting
15 within the usual course of his professional practice
16 and either registered individually or employed by a
17 registered pharmacy.

18 Do you agree with that?

19 A. I agree with that.

20 Q. And that's contained in 1306.06, which
21 we're going to -- that's P-GEN-00220, which we're
22 going to mark as Exhibit 4 [sic].

23 (Plaintiff Exhibit 5 was marked
24 for identification.)

25 MR. WEINBERGER: If you would bring that

1 up, Jim. And just, if you would, highlight it
2 because I actually read most of that directly
3 when I asked the last question.

4 BY MR. WEINBERGER:

5 Q. So you agree this is 1306.06, Ms. Ashley?

6 A. Yes.

7 Q. And would you agree, as it's your own
8 personal knowledge and understanding, that in order
9 for a pharmacist to fulfill the obligations of
10 1306.06, that is, in the normal course of practicing
11 in dispensing opioids and other controlled
12 substances, the pharmacy must identify and resolve
13 any red flags?

14 MS. SWIFT: Object to form.

15 THE WITNESS: Yes, I agree with that.

16 BY MR. WEINBERGER:

17 Q. And these defendant pharmacies, they
18 didn't need some specific regulation in the CFRs, or
19 in the Code of Federal Regulations, to tell them
20 that as a matter of course, they had an obligation,
21 or the pharmacist did, to identify red flags.

22 That is common-sense understanding
23 associated with all pharmacy education going back 30
24 or 40 years, correct?

25 MS. SWIFT: Object to form.

1 MR. BUSH: Objection.

2 MR. SOBOTKIN: The question about pharmacy
3 education is outside the scope of the Touhy
4 authorization. I'll instruct the witness not
5 to answer.

6 BY MR. WEINBERGER:

7 Q. All right. Well, pharmacists are
8 professionals, aren't they?

9 A. Yes.

10 Q. They have college degrees, right?

11 A. Yes, they do.

12 Q. And you've dealt with pharmacists for your
13 entire career, haven't you?

14 A. Yes, I have.

15 Q. And pharmacists and the corporations that
16 they employ all know that identifying and
17 investigating red flags is an integral part of the
18 pharmacy's obligation to -- before opioids are
19 dispensed, correct?

20 A. Correct.

21 MS. SWIFT: Objection, foundation, outside
22 the scope.

23 THE WITNESS: I believe they should know
24 and exercise that, yes.

25

1 BY MR. WEINBERGER:

2 Q. And identification of red flags is an
3 integral part of the pharmacy and the pharmacist's
4 fulfilling the corresponding responsibility required
5 by the CSA, correct?

6 MS. SWIFT: Objection, form, calls for a
7 legal conclusion.

8 THE WITNESS: I agree with that.

9 BY MR. WEINBERGER:

10 Q. The corresponding responsibility has been
11 described by the Drug Enforcement agency, in your
12 experience, as, quote, "the last line of defense to
13 preventing opioid abuse and diversion."

14 True?

15 MS. SWIFT: Object to form.

16 THE WITNESS: That's true.

17 BY MR. WEINBERGER:

18 Q. And by "last line of defense," what is
19 meant is it's the very last opportunity before the
20 opioid prescription pills gets into the hands of the
21 patient or gets onto the streets for the system to
22 ensure that the prescription is properly dispensed
23 under the laws, correct?

24 MS. SWIFT: Object to form.

25 MR. SOBOTKIN: The witness can answer if

1 that's her personal understanding of the
2 phrase, not the agency's.

3 THE WITNESS: It's my personal
4 understanding that that is the last
5 decision-making before it's turned over to the
6 end user, correct.

7 BY MR. WEINBERGER:

8 Q. Also known as the last line of defense,
9 correct?

10 A. Last line of defense, yes.

11 MR. WEINBERGER: Ms. Ashley, for me it's
12 about 10 to 12:00. For you, it's about 10 to
13 11:00.

14 Do you want to take a short break?

15 THE WITNESS: Sure, yes.

16 MR. WEINBERGER: Shall we come back in,
17 say, five minutes?

18 THE WITNESS: That would be great. Yes.

19 MR. WEINBERGER: All right. Very good.

20 THE VIDEOGRAPHER: Off the record, 10:50.

21 (Whereupon, a recess was taken
22 from 10:50 a.m. to 11:04 a.m.)

23 THE VIDEOGRAPHER: On the record at 11:04.

24 MR. WEINBERGER: Okay. Thank you.

25 Just to -- I need to do just a little bit

1 of housekeeping. I messed up some of the
2 exhibit numbers.

3 So Exhibit 4 -- it's not 3 -- Exhibit 4 is
4 P-GEN-00174. That's 1306.04.

5 And Exhibit 5 is P-GEN-00220, Exhibit 5.

6 Yes, Exhibit 5. That's the 1306.06.

7 BY MR. WEINBERGER:

8 Q. Ms. Ashley, I want to go back over some of
9 the exhibits that Ms. Swift showed you, and let's
10 start with Exhibit 1. Defendants' Exhibit 1, if you
11 can pull that back out.

12 A. I'm sorry, I left my glasses in the other
13 room. Hold on for a second.

14 Q. We will give you a minute.

15 A. I have it.

16 Q. Most importantly, you have your glasses.

17 A. I had to get a different pair. I couldn't
18 find them.

19 Q. Hopefully, they're good for reading.

20 A. Yeah.

21 Q. Okay. So Exhibit 1 is what Ms. Swift
22 showed you. It's this PowerPoint that -- where you
23 were a presenter, apparently, in 2016. And I want
24 to go over just a couple of pages of it.

25 If you go one, two, three, four, to the

1 fifth page. Like I say, they're numbered, yeah.

2 So this apparently was a presentation that
3 you made to representatives from the drug pharmacy
4 industry?

5 A. Okay.

6 Q. And you've entitled this "DEA and
7 Pharmacy: Working Together to Prevent Prescription
8 Drug Abuse."

9 Can we -- can we agree, based upon your
10 experience over your many years at the DEA, that,
11 you know, part of your job was to communicate with
12 DEAs -- I'm sorry, with pharmacy corporations like
13 these defendants and to cooperate with them and
14 provide them, where appropriate, proper guidance,
15 true?

16 A. Yes, that's true.

17 Q. And that's something you strove to do,
18 right?

19 A. Yes, I did.

20 Q. And so if any of these defendants were to
21 get up in open court and say, you know, we didn't
22 get -- we didn't get the help of the DEA that we
23 needed or we didn't get proper guidance, that just
24 wouldn't be true, would it?

25 MS. SWIFT: Objection, foundation, outside

1 the scope to the extent it has anything to do
2 with other than Ms. Ashley's own personal
3 knowledge.

4 BY MR. WEINBERGER:

5 Q. Okay. It just wouldn't be true from your
6 own personal experience, correct?

7 MS. SWIFT: Same objections. It's outside
8 the scope.

9 THE WITNESS: In my personal experience,
10 yeah, there were lots of questions, and I, you
11 know, did my best to respond.

12 BY MR. WEINBERGER:

13 Q. Okay. And to cooperate as much as
14 possible --

15 A. To cooperate, yes.

16 Q. -- as a governmental employee interested
17 in doing your job to prevent diversion, correct?

18 MS. SWIFT: Same objections.

19 THE WITNESS: That is correct.

20 BY MR. WEINBERGER:

21 Q. So go on, then, to Page 8 of this
22 PowerPoint. We can put that up on the screen.

23 This sort of piggy-backs on your testimony
24 before Congress in 2016. In this PowerPoint slide,
25 you are describing the impact of the opioid

1 prescription pill epidemic in our country from 2000
2 until 2014, correct?

3 A. That's correct.

4 Q. This significant increase in overdose
5 deaths, the fact that, you know, 500,000 people died
6 from drug overdoses, that's just -- and you've cited
7 statistics from the CDC for this slide, correct?

8 A. That's correct.

9 Q. That's the Center for Disease Control,
10 right?

11 A. Yes.

12 Q. Okay. And if we go on to the next slide,
13 you're now focusing in on 2014 and the effect of
14 this epidemic on our country, right?

15 A. Yes.

16 MR. WEINBERGER: I'm just going to let the
17 jury read this slide.

18 MS. SWIFT: Objection.

19 BY MR. WEINBERGER:

20 Q. Okay. If we go on to Page 15 and 16 --
21 let's start with Page 15 -- you're describing the
22 corresponding responsibility that rests with the
23 pharmacists, and we've already gone over that
24 earlier in your testimony, correct?

25 A. Yes.

1 Q. And the next -- the next slide, I'm kind
2 of interested in the words that you highlighted on
3 this slide. You have, "A pharmacist, by law, has a
4 corresponding responsibility to ensure that
5 prescriptions are legitimate."

6 What did you mean by that?

7 A. Just to make great effort to the best of
8 their ability to ensure.

9 Q. And is that part of -- part and parcel of
10 what we talked about earlier about the importance of
11 pharmacists and their -- and the companies they work
12 for to be vigilant with respect to filling
13 prescription opioids?

14 A. Yes, it is.

15 Q. And the next bullet point says, "When a
16 prescription is presented by a patient or demanded
17 to be filled by a patient -- for a patient by a
18 doctor's office, a pharmacist is not obligated to
19 fill the prescription."

20 What did you mean by that?

21 A. I mean they are not -- they have in their
22 professional judgment to make a decision to fill or
23 not fill. They are not obligated to do it. They
24 need to make a decision.

25 Q. And that's where we come back to this

1 whole red flag analysis, correct?

2 A. Correct.

3 MR. BUSH: Objection.

4 BY MR. WEINBERGER:

5 Q. I'm interested in the use of the
6 terminology "red flag," based upon your experience,
7 you know, as a layperson not in this field.

8 I'm just interested, from your personal
9 understanding, does "red flag" mean stop and
10 investigate? Is that what using that terminology
11 means?

12 A. It means stop, pay attention, warning,
13 yes.

14 Q. Okay. Go on to Page 28, if you would,
15 please. This is entitled "DEA Registrant
16 Initiatives."

17 What are you intending to communicate as
18 part of this presentation, at this part of this
19 presentation?

20 A. The initiatives that DEA may have going
21 forward in working with registrants. I'm just
22 reading this.

23 Q. Okay. Including reinforcing the issues
24 associated with red flag analysis of prescriptions?

25 A. That's correct.

1 Q. While we're -- while we're on this page, I
2 want to go back to Defendants' Exhibit 13, if you
3 could pull that out, please.

4 A. Which one was it?

5 Q. It's the one that's entitled
6 "Stakeholders' Challenges and Red Flag Warning
7 Signs."

8 A. Okay.

9 Q. Exhibit 13, Defendants' Exhibit 13.

10 A. I have it.

11 Q. Okay. You were -- you were asked a number
12 of questions about this.

13 On this first page, I don't see the DEA
14 listed as a stakeholder.

15 Do you know of your own personal knowledge
16 whether the DEA actually signed off on this
17 document?

18 A. I don't. But I do know they were
19 involved.

20 Q. Okay. In -- in this document, there's a
21 lot of footnotes. And if you would go to page -- in
22 the upper right-hand corner, there's a page number
23 for this document.

24 If you look at Page 9. Okay. Down below,
25 there's a footnote to the Holiday CVS case that we

1 talked about earlier. And this page, by the way,
2 talks about red flags. There's a footnote to
3 Holiday CVS case, correct?

4 A. Correct.

5 Q. And then there's also -- there's a
6 footnote to the East Main Street Pharmacy case.

7 Do you remember when I showed that to you
8 earlier, and you didn't recall that?

9 A. Yes, I do remember.

10 Q. And then if you go on to Page 11, there's
11 Footnotes 15 through 20, which are all cases from
12 the Federal Register, right?

13 A. Yes.

14 Q. And some of those cases go back to 2008,
15 right?

16 A. Yes.

17 Q. And all of these cases, to the extent that
18 they deal with corresponding responsibility and
19 obligations under the CSA and red flags, all would
20 have been available to all these defendant
21 pharmacies had they actually looked in the Federal
22 Register and followed the developments set forth in
23 those cases, correct?

24 A. That's correct.

25 Q. All right. I'm going back -- sorry to

1 skip around a little bit, but I'm going back to
2 Exhibit 1, which we still have in front of us. Look
3 at Page 32.

4 This is the National Take-Back Initiative.
5 It's a slide about taking unused prescription opioid
6 pills or promoting that patients who have them
7 sitting around in their medicine cabinets or
8 whatever should take them back to dispose of them,
9 right?

10 A. Yes.

11 Q. And you were shown, by the way, a
12 receptacle, a Walgreens receptacle, a picture of it
13 by Ms. Swift earlier.

14 Do you remember that?

15 A. Yes.

16 Q. So if the evidence in this case,
17 Ms. Ashley, was that, for years, the executives at
18 Walgreens, as documented in the evidence, objected
19 to putting these receptacles in their stores, would
20 that surprise you?

21 MR. SOBOTKIN: Objection.

22 MS. SWIFT: Objection, mischaracterizes
23 the evidence, outside the scope.

24 BY MR. WEINBERGER:

25 Q. You can answer.

1 A. That would surprise me. That they
2 objected to it?

3 Q. Yes.

4 A. That would surprise me, yes.

5 Q. Now, let's go on then to Defendants'
6 Exhibit 9. This was the PowerPoint that was
7 prepared by the executive director of the Ohio State
8 Board of Pharmacy that Ms. Swift asked you a number
9 of questions about.

10 A. Yes.

11 Q. The -- if you go to Page 4 of this
12 exhibit, she didn't -- she didn't show you this
13 particular slide, which is entitled "2010
14 Prescription Opioid Consumption Per Capita."

15 And it says, "Opioid doses per capita,"
16 and this is from the Ohio State Board of Pharmacy.

17 A. Uh-huh.

18 Q. Now, when we use the term "per capita,"
19 what we're talking about is the number of doses per
20 person in a particular -- in this particular case,
21 in a particular county.

22 Do you see that?

23 A. Yes.

24 Q. And, you know, one of the plaintiffs in
25 this case is Trumbull County. And if I read that

1 correctly, in 2010, there were 85.5 doses of opioids
2 dispensed in Trumbull County per person for 2010.

3 MS. SWIFT: Object to the form.

4 MR. SOBOTKIN: Objection.

5 BY MR. WEINBERGER:

6 Q. Do you see that?

7 MS. SWIFT: Object to the form.

8 MR. BUSH: Is there a question?

9 THE WITNESS: Oh, yeah.

10 BY MR. WEINBERGER:

11 Q. Do you see that?

12 A. I can see that, yes.

13 Q. And you're aware that Walgreens and
14 Walmart and Rite Aid and CVS -- and I think
15 Giant Eagle, but I'm not going to include
16 Giant Eagle in this question -- those four all had
17 pharmacies in Trumbull County?

18 MS. SWIFT: Object to the form,
19 foundation.

20 BY MR. WEINBERGER:

21 Q. Are you aware of that?

22 A. Am I aware? I just would assume, if I
23 can. I would just assume.

24 Q. I'm sorry?

25 A. I would just assume. I don't know for

1 certain. I would assume that they have pharmacies
2 in that area.

3 Q. And 85 doses of opioids per person, every
4 man, woman, and child in Trumbull County, is that an
5 indication to you of overprescribing and
6 overdispensing in --

7 MS. SWIFT: Object to the form,
8 foundation.

9 MR. SOBOTKIN: Objection.

10 MS. SWIFT: Beyond the scope.

11 MR. WEINBERGER: Can I finish my question,
12 please, with all due respect? Okay? I know I
13 hesitate sometimes.

14 MS. SWIFT: Yeah, you do.

15 MR. WEINBERGER: But I'd really like to
16 finish my question if I could.

17 MR. SOBOTKIN: I thought you were done.

18 MR. WEINBERGER: Yeah, I appreciate that.

19 BY MR. WEINBERGER:

20 Q. So is that statistic an indication of
21 overprescribing and overdispensing, based upon your
22 own personal knowledge back in 2010?

23 MR. SOBOTKIN: Objection, I'm going to
24 direct the witness not to answer as outside the
25 scope of the Touhy authorization, to the extent

1 it calls for her personal or expert opinion as
2 to nonpublic facts she gained during the course
3 of her employment at DEA.

4 MR. WEINBERGER: Is that a she can't
5 answer?

6 MR. SOBOTKIN: She can't answer if it
7 requires her to rely on nonpublic facts that
8 she learned as a DEA employee.

9 MR. WEINBERGER: Oh, okay.

10 MR. SOBOTKIN: If she can answer it -- and
11 this is on her -- based on public facts or
12 post-employment at DEA facts, then she can
13 answer.

14 MS. SWIFT: And I'm going to object as
15 well. It's outside the scope and the witness
16 lacks foundation.

17 THE WITNESS: My answer would rely on
18 nonpublic facts at DEA that I acquired at DEA.

19 BY MR. WEINBERGER:

20 Q. Fair enough.

21 Let's look at -- are you familiar, as a
22 DEA employee, of "blue highway," the description of
23 the "blue highway"?

24 MS. SWIFT: Objection, outside the scope.

25 THE WITNESS: The term is familiar.

1 BY MR. WEINBERGER:

2 Q. Yeah, it's traveling -- it's the traveling
3 of pills from one location to another on the highway
4 system of Interstate 77, in general.

5 Do you remember that, in general?

6 MS. SWIFT: I'm going to object that this
7 is outside the scope. Where in the Touhy
8 authorization do you think that this is
9 covered, Pete?

10 MR. WEINBERGER: Well, I'll tell you what,
11 Ms. Swift. I'll tell you where that's coming
12 from.

13 BY MR. WEINBERGER:

14 Q. If you look at Exhibit 2 that Ms. Swift
15 used in questioning you, this is the -- this is the
16 DEA PowerPoint about what Ms. Swift questioned you
17 about regarding rogue pain clinics and pill mills.

18 And if you look at Page 34 of this exhibit
19 that she used, that she got from the DEA, this slide
20 apparently depicts the migration of pain clinics
21 from Florida through Georgia, Tennessee, Kentucky,
22 and Ohio.

23 Do you see that?

24 MS. SWIFT: Object to the form.

25 THE WITNESS: I see that, yes.

1 BY MR. WEINBERGER:

2 Q. And from your knowledge, Ms. Ashley, at
3 the DEA, was the DEA aware of the fact that patients
4 were coming from Ohio, Kentucky, Tennessee, Georgia,
5 going down to Florida, and getting prescriptions
6 filled and then taking them back to these other
7 states?

8 MS. SWIFT: Object to the form.

9 MR. SOBOTKIN: I'm going to direct the
10 witness not to answer as to what DEA may have
11 known or not known.

12 But the witness can answer as to what she
13 knew.

14 BY MR. WEINBERGER:

15 Q. Sorry, that's how I should be couching
16 these questions, Ms. Ashley.

17 Did you know about that?

18 A. I did not know independent of DEA, of my
19 role --

20 Q. You became --

21 A. -- at DEA.

22 Q. You became generally aware of that in your
23 position at DEA, correct?

24 MS. SWIFT: Object to the form. She was
25 just instructed not to answer the question.

1 BY MR. WEINBERGER:

2 Q. Well, are you -- okay. You can answer the
3 question, Ms. Ashley.

4 MS. SWIFT: Same objection.

5 THE WITNESS: I became aware of it in my
6 role at DEA, yes.

7 BY MR. WEINBERGER:

8 Q. And did you become aware, as part of your
9 personal experience at the DEA, that some of this
10 pill migration or traveling was from pills that were
11 being dispensed at the Walgreens and CVS Pharmacy
12 facilities in Florida?

13 MS. SWIFT: Object to form, outside the
14 scope, foundation.

15 MR. BUSH: Objection.

16 THE WITNESS: I recall that, yes.

17 BY MR. WEINBERGER:

18 Q. And some of the conduct at those CVS and
19 Walgreens stores were investigated, and the subject
20 of enforcement actions brought against those
21 companies by the DEA.

22 Without going into details, isn't that
23 true?

24 MS. SWIFT: Object to the form, outside
25 the scope.

1 MR. BUSH: Objection.

2 MS. SWIFT: Foundation.

3 MR. SOBOTKIN: Objection, outside the
4 scope.

5 To the extent you can answer in the
6 general, you can answer.

7 To the extent you're required to answer as
8 to specific enforcement matters or
9 investigations, you cannot answer.

10 THE WITNESS: I am aware of that, yes.

11 BY MR. WEINBERGER:

12 Q. In Exhibit 15, which is the 2006 --
13 Defendants' Exhibit 15, which is the 2006
14 publication the Federal Register that you were asked
15 about by Ms. Swift, if you could go to the first
16 page, the next page, I was interested that she sort
17 of skipped over this part when she asked you
18 questions.

19 This is 2006, starting the first column,
20 left column all the way at the bottom.

21 Jim, there you go, "Extent of Abuse in the
22 United States of Controlled Prescription Drugs."

23 Again, 2006, this is published. Let me
24 read this to you. "The abuse (nonmedical use) of
25 prescription drugs is a serious and growing health

1 problem in this country. As the administration has
2 announced, recent data indicate that prescription
3 drug abuse, particularly of opioid painkillers, has
4 increased at an alarming rate over the past decade."

5 Let me stop there.

6 From your understanding, personal
7 understanding, so this is a problem that started in
8 the mid 1990s, correct?

9 MS. SWIFT: Object to the form.

10 THE WITNESS: Correct.

11 BY MR. WEINBERGER:

12 Q. And going on to the next paragraph, one of
13 the areas -- see it, Jim? Right there.

14 "One of the areas of concerns is the
15 number of persons who have recently begun abusing
16 prescription controlled substances. In the NSDUH
17 Report published in June of 2006, SAMHSA states, 'In
18 2004, among persons aged 12 or older, 2.4 million
19 initiated nonmedical use of prescription pain
20 relievers within the past year.'"

21 All of this information published in the
22 Federal Register should have been available to and
23 reviewed by the regulatory compliance offices of
24 each of these defendants; isn't that true?

25 MS. SWIFT: Object to the form.

1 MR. BUSH: Objection.

2 THE WITNESS: That's publicly available,
3 yes.

4 MR. WEINBERGER: So you can take that
5 down, Jim.

6 BY MR. WEINBERGER:

7 Q. I asked you earlier, in general, that when
8 the DEA files and proceeds with enforcement actions
9 against the pharmacies, including these defendants,
10 whether there is information published about those
11 enforcement -- that conclusions of those enforcement
12 actions published by the DEA in the Federal
13 Register.

14 Do you remember my question about that?

15 A. I do.

16 Q. If you would pull out P-OD-WAG-00248.

17 MR. SOBOTKIN: Can I get that number
18 again, please.

19 MR. WEINBERGER: Sure. 00248.

20 P-OD-WAG-00248.

21 THE WITNESS: I have it.

22 MR. BUSH: This is what exhibit? I'm
23 sorry.

24 MR. WEINBERGER: This is Exhibit 6,
25 Plaintiffs' Exhibit 6.

1 (Plaintiff Exhibit 6 was marked
2 for identification.)

3 MR. WEINBERGER: Thanks for reminding me.
4 BY MR. WEINBERGER:

5 Q. This is -- this is a settlement agreement
6 between the federal government and CVS from 2015,
7 and I just want to -- first of all, are you familiar
8 with the settlement agreement, the document itself?

9 MR. BUSH: Objection, outside the scope.
10 I object to all questions about the settlement
11 agreement and the enforcement action, so
12 starting early.

13 THE WITNESS: I'm familiar with the
14 settlement agreement with CVS.

15 BY MR. WEINBERGER:

16 Q. Okay. And I'm not going to ask you about
17 details of the investigation because that's
18 off-limits for me today.

19 But if you look at Page 3 of the
20 agreement, Paragraph K, it says here, "CVS
21 acknowledges that certain CVS/pharmacy retail stores
22 did dispense certain controlled substances in a
23 manner not fully consistent with their compliance
24 obligations under the CSA and its implementing
25 regulations."

1 Do you see that?

2 A. I do.

3 Q. And if you go back to Page 2, Paragraph G,
4 it says, "CVS" -- and this is the corporation CVS,
5 right?

6 A. Yes.

7 Q. Not some individual pharmacist, right?

8 A. Correct.

9 Q. It says, "CVS acknowledges that it has a
10 corresponding responsibility to dispense only those
11 prescriptions that have been issued for a legitimate
12 medical purpose by an individual practitioner acting
13 in the usual course of professional practice and
14 that knowingly filling a prescription not in the
15 usual course of professional practice [sic] or in
16 legitimate and authorized research subjects CSA --
17 CVS to penalties under the CSA."

18 Did I read that correctly?

19 A. Yes.

20 Q. And the Department of Justice issued a
21 press release about this settlement, and we will
22 pull that out. It's P-GEN-00221.

23 A. I have it.

24 MR. WEINBERGER: Okay. We will mark that
25 as Exhibit 7.

1 (Plaintiff Exhibit 7 was marked
2 for identification.)

3 BY MR. WEINBERGER:

4 Q. So this is from the Department of Justice
5 website.

6 A. Yes.

7 Q. And this is a report of the settlement we
8 just looked at. The United States reached a
9 \$22 million settlement agreement with CVS for the
10 unlawful distribution of controlled substances.

11 MR. SOBOTKIN: Objection. Is there a
12 question?

13 BY MR. WEINBERGER:

14 Q. Have I read that correctly?

15 A. Yes.

16 MS. SWIFT: I'm going to object to the
17 foundation and to the form of the question.

18 MR. BUSH: Me too.

19 BY MR. WEINBERGER:

20 Q. Look at the -- on the first paragraph, the
21 last line that says, "CVS." "CVS further
22 acknowledged"?

23 A. Yes.

24 Q. It says, "CVS further acknowledged that
25 certain of its retail stores dispensed certain

1 controlled substances in a manner not fully
2 consistent with their compliance obligations under
3 the Controlled Substances Act and related
4 regulations."

5 Have I read that correctly?

6 A. Yes.

7 Q. Did you have knowledge of that occurring
8 when you were at the DEA?

9 MR. SOBOTKIN: Objection, outside the
10 scope of the Touhy authorization.

11 BY MR. WEINBERGER:

12 Q. I'm sorry, did you have knowledge of this
13 settlement at the time, not the investigation, of
14 this settlement?

15 MR. SOBOTKIN: I'm sorry, the event of the
16 settlement itself?

17 MR. WEINBERGER: Yes, yes.

18 THE WITNESS: Yes, I had knowledge of it.

19 MR. WEINBERGER: And if you look at
20 P-GEN-00222, we will mark that as Exhibit 8.

21 (Plaintiff Exhibit 8 was marked
22 for identification.)

23 THE WITNESS: I have it.

24 BY MR. WEINBERGER:

25 Q. This is a -- this is from the Department

1 of Justice website announcing an \$8 million
2 settlement with CVS for the unlawful distribution of
3 controlled substances in 2016. And it says here --
4 there's a number of comments from the U.S. Attorney
5 who was in charge of this enforcement action, but
6 look at the last paragraph on the first page.

7 It says, "According to the settlement
8 agreement, CVS acknowledged that between 2008 and
9 2012 certain CVS pharmacy stores in Maryland
10 dispensed controlled substances, including
11 oxycodone, fentanyl, and hydrocodone, in a manner
12 not fully consistent with their compliance
13 obligations under the CSA and related regulations.
14 This included failing to comply with a pharmacist's
15 liability to ensure the controlled substance
16 prescriptions were issued for a legitimate medical
17 purpose. Caps off an investigation that was part of
18 the DEA's crackdown on prescription drug abuse in
19 Maryland."

20 So this was CVS acknowledging their
21 obligations and responsibilities, not some
22 pharmacist for CVS, right?

23 MR. SOBOTKIN: Objection, outside the
24 scope of the Touhy. I'm directing the witness
25 not to answer.

1 BY MR. WEINBERGER:

2 Q. Well, you were familiar with this
3 settlement, right?

4 A. Yes, I'm familiar with the settlement.

5 Q. And the Department of Justice's
6 description of the settlement that I just read is
7 consistent with your understanding of it, correct?

8 MR. BUSH: Objection, foundation.

9 BY MR. WEINBERGER:

10 Q. Personal understanding.

11 A. Yes.

12 Q. And if you would pull out P-OD-WAG-00249,
13 which we're going to mark as Exhibit 9.

14 MS. SWIFT: What was the number, Pete?

15 MR. WEINBERGER: 00249.

16 THE WITNESS: I have it.

17 (Plaintiff Exhibit 9 was marked
18 for identification.)

19 BY MR. WEINBERGER:

20 Q. This is the -- this is the agreement,
21 Exhibit 9, that's referenced in that -- in the DOJ
22 press release, and if you look at Page 2 of the
23 agreement, Section E, just like the other agreement,
24 it has CVS acknowledging that it has a corresponding
25 responsibility, right?

1 A. Right.

2 MR. SOBOTKIN: Objection.

3 THE WITNESS: Oh, sorry.

4 BY MR. WEINBERGER:

5 Q. And under Section G --

6 MR. SOBOTKIN: I'm sorry, Pete. Is the
7 question does the agreement say that? Or is
8 the question does she agree with the substance
9 of that statement?

10 MR. WEINBERGER: The latter.

11 MR. SOBOTKIN: Okay. Then, I'm going to
12 object, outside the scope, and direct the
13 witness not to answer.

14 BY MR. WEINBERGER:

15 Q. All right. Then, I'll ask the former.

16 Does the agreement say that, that CVS is
17 acknowledging it has a corresponding responsibility?

18 A. Yes.

19 MR. BUSH: And I'm going to object to the
20 whole line of questioning. It's all outside
21 the scope.

22 MR. WEINBERGER: It has nothing to do with
23 dispensing, right, Mr. Bush? All right. Go
24 ahead. Sorry, withdraw that comment.

25

1 BY MR. WEINBERGER:

2 Q. Did I read that --

3 A. Yes, you read that, yes.

4 Q. -- correctly?

5 And then in Paragraph G, it says, CVS
6 acknowledges that these CVS/pharmacy stores
7 dispensed in a manner -- controlled substances in a
8 manner not fully consistent with their compliance
9 obligations and their corresponding responsibility.

10 Is that what the agreement says?

11 A. That's what it says, correct.

12 Q. Now, let's move to Walgreens for a moment,
13 Ms. Swift's client.

14 Are you familiar generally with the fact
15 that, in 2013, Walgreens agreed to pay a settlement
16 of \$80 million for civil penalties under the
17 Controlled Substances Act?

18 MS. SWIFT: Objection, outside the scope,
19 foundation.

20 THE WITNESS: Yes, I'm familiar with that.

21 MR. WEINBERGER: Okay. Let's take a look
22 at P-GEN-00224. I'm going to mark this as
23 Exhibit 10.

24 (Plaintiff Exhibit 10 was marked
25 for identification.)

1 BY MR. WEINBERGER:

2 Q. This is the press release from the
3 Department of Justice.

4 And in this press release, at Paragraph 2,
5 the second paragraph, it says, "The settlement, the
6 largest in DEA history, resolves allegations that
7 the Registrants," meaning Walgreens, "committed an
8 unprecedented number of recordkeeping and dispensing
9 violations under the Act. According to documents
10 filed in the underlying administrative actions, the
11 Registrants negligently allowed controlled
12 substances listed as -- in Schedules II to V of the
13 Act, such as oxycodone and other prescription
14 painkillers, to be diverted for abuse and illegal
15 black market sales."

16 Did I read that correctly?

17 MS. SWIFT: Objection. This is well
18 outside the scope. The witness should not
19 answer these questions.

20 MR. SOBOTKIN: Objection. Is the question
21 does the press release say that, contain that
22 line that you just read?

23 MR. WEINBERGER: We'll go with that.

24 BY MR. WEINBERGER:

25 Q. Does it?

1 A. Yes, it does.

2 Q. And were you generally familiar, as the --
3 and personally knowledgeable about this \$80 million
4 settlement of this enforcement action with
5 Walgreens?

6 MS. SWIFT: Objection, outside the scope.

7 THE WITNESS: Yes, personally
8 knowledgeable, yes.

9 BY MR. WEINBERGER:

10 Q. And this press release, by the way, on the
11 third page, actually has a link to the actual
12 settlement agreement, doesn't it?

13 MR. SOBOTKIN: Objection.

14 BY MR. WEINBERGER:

15 Q. Walgreens MOA and addendum, doesn't it?

16 MR. SOBOTKIN: Objection, the document
17 says Walgreens MOA and addendum. There's no
18 way the witness could possibly know what that
19 link would lead to.

20 BY MR. WEINBERGER:

21 Q. Well, do you know, from your own personal
22 knowledge, that the Department of Justice in this
23 press release had the ability -- or had allowed
24 people who were reading it the ability to link to
25 the Walgreens memorandum of agreement?

1 MR. SOBOTKIN: Objection, outside the
2 scope. Direct the witness not to answer.

3 BY MR. WEINBERGER:

4 Q. Well, certainly, that's what it says on
5 the document, right? That there's a link to it,
6 right? And it's in a PDF form, right?

7 MS. SWIFT: Objection, form.

8 BY MR. WEINBERGER:

9 Q. You can answer.

10 A. That's what it says, yes.

11 Q. Without telling us any details, were you
12 involved either in supervising or on the ground with
13 respect to the Walgreens investigation?

14 MR. SOBOTKIN: Objection.

15 MS. SWIFT: Object to the form.

16 MR. SOBOTKIN: Outside of the scope of the
17 Touhy authorization. Direct the witness not to
18 answer.

19 MR. WEINBERGER: All right. Let's pull
20 out PWAG-00001, which we will mark as
21 Exhibit 11.

22 (Plaintiff Exhibit 11 was marked
23 for identification.)

24 BY MR. WEINBERGER:

25 Q. It's a real thick document. It's the

1 Walgreens memorandum of agreement from 2013.

2 A. I have it.

3 MS. SWIFT: Objection to the extent you're
4 mischaracterizing the document.

5 MR. WEINBERGER: You mean that it's large?
6 Okay.

7 BY MR. WEINBERGER:

8 Q. Exhibit 11 --

9 MS. SWIFT: No, that's not what I meant.

10 BY MR. WEINBERGER:

11 Q. Exhibit -- Exhibit 11, are you familiar
12 with this agreement?

13 MS. SWIFT: Objection, outside the scope.

14 MR. SOBOTKIN: Objection, outside the
15 scope. Direct the witness not to answer.

16 BY MR. WEINBERGER:

17 Q. Just the document itself, have you seen
18 this document before?

19 MS. SWIFT: Objection, outside the scope.

20 BY MR. WEINBERGER:

21 Q. You can answer.

22 A. Okay. Let me look at the year.

23 Yes.

24 MS. SWIFT: And --

25

1 BY MR. WEINBERGER:

2 Q. Yes?

3 And from your own personal knowledge,
4 without getting into any details about the
5 investigation, did it include issues associated with
6 the dispensing practices of Walgreens?

7 MS. SWIFT: I'm going to object that you
8 are -- you just did get into the details of the
9 investigation, and it's outside the scope.

10 MR. SOBOTKIN: And I'm going to object
11 that's outside the scope and direct the witness
12 not to answer.

13 BY MR. WEINBERGER:

14 Q. Did you -- have you recently read about
15 the DOJ's enforcement action that they've filed
16 against Walmart associated with Walmart's dispensing
17 conduct?

18 MS. SWIFT: Objection, outside the scope.

19 MR. BUSH: Join.

20 THE WITNESS: Did I read it? Yes.

21 BY MR. WEINBERGER:

22 Q. Well, since you're not -- you weren't at
23 the DOJ at the time that it was filed, I'm not going
24 to go into that in any significant detail.

25 So, Ms. Ashley, we talked about the fact

1 that these pharmacy defendants have a duty to
2 provide the tools to their pharmacists to prevent
3 diversion, generally speaking, under 1301.71,
4 correct?

5 MS. SWIFT: Objection to form.

6 MR. BUSH: Objection.

7 BY MR. WEINBERGER:

8 Q. Do you agree with that?

9 MS. SWIFT: Object to the form.

10 MR. BUSH: Objection.

11 THE WITNESS: Yes.

12 BY MR. WEINBERGER:

13 Q. Okay. Do you believe from your experience
14 at the DEA, that that includes pharmacies providing
15 a work environment for their pharmacists that allows
16 the pharmacists to fulfill their corresponding
17 responsibility?

18 MS. SWIFT: Object to the form.

19 THE WITNESS: That a pharmacy should? Is
20 that what you're asking?

21 BY MR. WEINBERGER:

22 Q. Yes.

23 A. Yeah, I agree with that.

24 Q. So that would include not imposing strict
25 and unreasonable time limits to fill prescriptions

1 so that they can't have enough time to investigate
2 red flags?

3 MS. SWIFT: Object to the form.

4 THE WITNESS: Yeah, that sounds
5 unreasonable.

6 BY MR. WEINBERGER:

7 Q. Not -- and it would include not requiring
8 quotas on prescriptions filled?

9 MS. SWIFT: Object to the form.

10 BY MR. WEINBERGER:

11 Q. True?

12 A. Yeah, that sounds unreasonable.

13 Q. It would require adequate staffing of the
14 pharmacy to allow enough pharmacists at these stores
15 to fulfill their corresponding responsibility, true?

16 MS. SWIFT: Object to the form.

17 MR. BUSH: Objection.

18 THE WITNESS: Yeah, I think that's
19 important.

20 MR. WEINBERGER: Ms. Ashley, those are all
21 the questions I have. Thank you.

22 MS. SWIFT: It looks like it's about
23 lunchtime. Can we take a break for lunch and
24 then come back for our redirect?

25 THE WITNESS: Sure.

1 MR. WEINBERGER: It's okay with me.

2 MS. SWIFT: Okay with you guys?

3 THE VIDEOGRAPHER: Off the record, 11:50.

4 (Whereupon, a lunch recess was
5 taken from 11:50 a.m. to
6 12:40 p.m.)

7 THE VIDEOGRAPHER: We're on the record at
8 12:40.

9 FURTHER EXAMINATION

10 BY MS. SWIFT:

11 Q. Ms. Ashley, the Department of Justice has
12 allowed the plaintiffs to ask questions about CVS
13 and Walgreens Pharmacies that were investigated by
14 the DEA, some close to or more than a decade ago.

15 Do you recall those questions?

16 MR. SOBOTKIN: Objection, mischaracterizes
17 testimony, but you can answer if you can.

18 THE WITNESS: Do I recall the questions?

19 I'm sorry, from you guys?

20 BY MS. SWIFT:

21 Q. From the plaintiffs' lawyer earlier today,
22 Mr. Weinberger.

23 A. Yes, I do.

24 Q. Okay. Do you understand that all of those
25 investigations occurred in Florida?

1 MR. SOBOTKIN: Objection. I'm going to
2 direct the witness not to answer. It's outside
3 the scope of the Touhy authorization.

4 MS. SWIFT: David, Mr. Weinberger was
5 allowed to ask a number of questions, not just
6 about those investigations, but about the
7 details of those investigations. I've got to
8 be allowed to redirect on it.

9 MR. SOBOTKIN: I disagree with your
10 premise. I don't think he was allowed to get
11 into any of the details on the investigations.
12 Just he -- Ms. Ashley was allowed to read aloud
13 or confirm the correct reading of certain
14 documents, but nothing about the details of
15 those.

16 MS. SWIFT: He asked her questions about
17 the details of numerous settlements, about what
18 those settlement agreements said, and what they
19 related to, which was the underlying
20 investigations. That is what he asked her
21 about, very selectively.

22 I've got to be able to redirect on it.

23 MR. SOBOTKIN: I -- I agree you can
24 redirect on some of that, but I don't think he
25 got into any of those kind of particular

1 matters.

2 MR. WEINBERGER: I was very careful, based
3 upon the instructions from Mr. Sobotkin, to do
4 exactly what he has stated.

5 MS. SWIFT: I disagree. And, look, we
6 will take it question by question, but I
7 disagree.

8 Mr. Weinberger was allowed to ask lots of
9 questions about investigations and settlements
10 that we've never been able to ask a DEA witness
11 questions about, but I hear you simply saying
12 David, that you're not cutting it off entirely.
13 So let's just take it question by question.

14 MR. SOBOTKIN: I agree with that.

15 BY MS. SWIFT:

16 Q. Ms. Ashley, do you understand that the
17 settlement agreements that Mr. Weinberger showed you
18 today with respect to Walgreens and CVS, every one
19 of those related to investigations in Florida?

20 A. That's not how I recall it. I thought
21 they were national. I mean, I could be wrong.

22 Q. Do you have Plaintiffs' Exhibit 10 handy?
23 It's the Southern District of Florida's press
24 release about the Walgreens settlement.

25 A. Yes.

1 Q. Do you agree with me that it's a press
2 release from the United States Attorney's Office in
3 the Southern District of Florida?

4 A. Yes.

5 Q. Do you have any personal knowledge about
6 anything having to do with this settlement or the
7 underlying investigation relating to any other state
8 besides Florida?

9 MR. SOBOTKIN: Objection. This one is
10 outside the scope of the Touhy.

11 MS. SWIFT: David, I'm going to have to
12 hold the deposition open if I can't ask these
13 questions. This is -- I mean, this is absurd.

14 MR. SOBOTKIN: Listen, I'm not going to
15 tell you or suggest how you should be doing
16 your exam, but the kind of framework that I was
17 working with was allowing Mr. Weinberger to
18 talk about the face of the document and, you
19 know, whether or not Ms. Ashley was aware of
20 the event of a settlement or of an action.

21 But further delving into the details was
22 where I drew the line, and, you know, I'm
23 trying to be consistent between the two
24 parties.

25 MS. SWIFT: All right.

1 BY MS. SWIFT:

2 Q. Ms. Ashley, do you see on the face of
3 Exhibit 10, the press release from the United States
4 Attorney's Office in the Southern District of
5 Florida, it says, in the first paragraph, that the
6 settlement related to six Walgreens retail
7 pharmacies in Florida, in the first paragraph?

8 A. Yes, that's what it says.

9 Q. Do you understand that Walgreens
10 cooperated with the DEA in that investigation that
11 led to the settlement?

12 MR. SOBOTKIN: Objection. That's outside
13 the scope of the Touhy.

14 BY MS. SWIFT:

15 Q. Do you understand that as a result of this
16 investigation, Walgreens voluntarily stopped
17 dispensing controlled substances at those six
18 Walgreens pharmacies?

19 MR. SOBOTKIN: Objection, outside the
20 scope.

21 BY MS. SWIFT:

22 Q. Do you understand that the investigation
23 that is described in Exhibit 10 related to
24 dispensing limited to 2010 and 2011?

25 MR. SOBOTKIN: Objection, outside the

1 scope unless there's something particular in
2 this document that you can point to.

3 BY MS. SWIFT:

4 Q. Setting aside Exhibit 10, Ms. Ashley, are
5 you aware of any DEA investigation of any Walgreens
6 Pharmacy in Ohio relating to the dispensing of
7 opioids?

8 MR. SOBOTKIN: Objection, that's outside
9 the scope.

10 BY MS. SWIFT:

11 Q. Ms. Ashley, do you have any reason to
12 believe that Walgreens has not been vigilant in its
13 evaluation of prescriptions for opioids in the State
14 of Ohio?

15 MR. WEINBERGER: Objection.

16 MR. SOBOTKIN: Object to form, but you can
17 answer, if you can.

18 THE WITNESS: I don't recall.

19 BY MS. SWIFT:

20 Q. Sitting here today, you don't have any
21 reason to believe that Walgreens has not been
22 vigilant in its evaluation of prescriptions for
23 opioids in the State of Ohio?

24 MR. WEINBERGER: Objection.

25 MR. SOBOTKIN: I'm going to object, only

1 to point out, you can answer unless it requires
2 you to rely on nonpublic facts you gained as a
3 DEA employee.

4 THE WITNESS: It would require me to rely
5 on DEA information, not nonpublic.

6 BY MS. SWIFT:

7 Q. Ms. Ashley, if you would, pull out
8 Exhibit 2, which is your PowerPoint from 2013.

9 A. Let me see. Where did I put it? Where
10 did I put it?

11 I have it.

12 Q. All right. If you would, turn to Page 34
13 of your 2013 PowerPoint, which is the page that --
14 or one of the pages the plaintiffs' lawyer asked you
15 about before.

16 Do you remember that?

17 A. Yes.

18 Q. The plaintiffs' lawyer suggested that the
19 map on Page 34 showed a migration of patients from
20 Florida to Ohio.

21 Do you recall those questions?

22 A. I'm sorry, I think I --

23 MR. WEINBERGER: Mischaracterizes the
24 testimony. It mischaracterizes the question
25 that I asked, but --

1 THE WITNESS: I may be looking at the
2 wrong PowerPoint. You said my PowerPoint,
3 Page 34?

4 BY MS. SWIFT:

5 Q. It's the one that was marked as Exhibit 2.

6 MR. WEINBERGER: That's not hers. That's
7 not her PowerPoint.

8 BY MS. SWIFT:

9 Q. It's this one.

10 A. Yeah, that's not mine.

11 Q. Okay. This is the one from the Chicago
12 presentation in 2013?

13 A. That's correct, but I didn't give this
14 presentation.

15 Q. Turn to Page 34 of this presentation.
16 It's Exhibit 2.

17 A. Sure. I have it.

18 Q. And do you see that the heading of this
19 slide says "Migration of Pain Clinics"?

20 A. Yes, I see that.

21 Q. And it shows arrows going from Florida up
22 through Georgia, Tennessee, Kentucky, and Ohio,
23 correct?

24 A. Correct.

25 Q. Then if you'd turn to Page 39 -- sorry,

1 it's not 39.

2 Oh, it's 38, I'm sorry, with the heading
3 "Georgia Pain Clinics."

4 A. I have it.

5 Q. Actually, just to lead up to it, let's go
6 back to 36. I apologize, just so it will make more
7 sense if we start with 36.

8 A. Sure. I have it.

9 Q. It says, "Georgia Example: Traditional
10 Pain Management Clinics."

11 Do you see that?

12 A. I do.

13 Q. And it says in the years prior to 2009 and
14 2010, there were 15 to 20 legitimate clinics.

15 Do you see that?

16 A. Yes.

17 Q. "Almost all owned by physicians.

18 "Accept insurance, Medicaid, Medicare,
19 et cetera.

20 "Patients need appointments.

21 "Follow pain management guidelines.

22 "Patients get a complete physical work-up
23 and exam.

24 "Use physical therapy, other treatment
25 methods.

1 "Prescribed drugs usually include
2 nonnarcotics."

3 Do you see all of that?

4 A. Yes.

5 Q. Then if you go back to Page 38, it says,
6 "Now in 2012 - approximately 125 rogue clinics owned
7 by nonphysicians, and the owners:

8 "Are from another state.

9 "Many are convicted felons.

10 "Usually owned or operated a pain clinic
11 in another state.

12 "Have ties to some type of ordinary
13 crime."

14 And then the last bullet says, "If from
15 Florida, left not because of the Florida PMP, but
16 due to new Pain Clinic restrictions and no
17 dispensing."

18 Did I get all that correctly?

19 A. Yes.

20 Q. And is that consistent with your
21 understanding from your 30-plus years at the DEA of
22 what happened with the expansion of rogue pain
23 clinics in this time frame?

24 A. Yeah, in general, yes.

25 Q. The fifth bullet, "If from Florida, left

1 not because of the Florida PMP, but due to new Pain
2 Clinic restrictions and no dispensing," do you know
3 what that means?

4 A. I'm sorry, say that again.

5 Q. Do you know what that fifth bullet means?

6 A. The fifth bullet, one, two, three, four,
7 five, "if from Florida."

8 It's written kind of oddly. I'm not sure
9 what they're saying.

10 Q. Okay. We will come back to that.

11 Flip ahead to Page 47, please. This slide
12 has a heading that says, "Utility of the TDSs:
13 Operation Pill Nation."

14 Do you know what the acronym "TDS" stands
15 for?

16 A. Yes.

17 Q. What does it stand for?

18 A. Tactical diversion squad.

19 Q. So this says, "Utility of the Tactical
20 Diversion Squads: Operation Pill Nation."

21 Explain for me, please, if you could, what
22 the tactical diversion squads were or are.

23 MR. WEINBERGER: Objection, improper
24 redirect. Beyond the scope of
25 cross-examination.

1 BY MS. SWIFT:

2 Q. You can answer.

3 A. The tactical diversion quad are groups
4 within DEA that have diversion investigators,
5 special agents, and local state law enforcement
6 officers, and they work together on diversion
7 matters.

8 Q. What is Operation Pill Nation?

9 MR. WEINBERGER: Objection.

10 MR. SOBOTKIN: Objection. Outside the
11 scope of the Touhy, as it gets into kind of
12 particular matters.

13 MS. SWIFT: It's within the scope of the
14 Touhy as it relates to a presentation given by
15 DEA to registrants including pharmacies on
16 their obligations regarding preventing
17 diversion, and I'm just going to ask her based
18 on the face of the document.

19 MR. SOBOTKIN: Let me rephrase my
20 objection, if I can.

21 I'll object to the Touhy as it -- object
22 to the scope as outside the Touhy, except to
23 the extent that it's information that's been
24 conveyed to third parties.

25 MR. WEINBERGER: And I object on the basis

1 of improper redirect.

2 BY MS. SWIFT:

3 Q. Do you remember the question, Ms. Ashley?

4 A. Yes, what was Operation Pill Nation?

5 Q. Yes.

6 A. That was the title given to the initiative
7 for the Florida investigations.

8 Q. Is it correct that Operation Pill Nation
9 began in February of 2010 in Florida?

10 A. I don't recall.

11 MR. WEINBERGER: Objection.

12 THE WITNESS: But in general.

13 BY MS. SWIFT:

14 Q. That's what it says in the document?

15 A. Yeah, yeah. It says that, when it began,
16 yeah.

17 Q. It also says that DEA was working with
18 other federal, state and local partners to start
19 identifying, targeting, and investigating rogue pain
20 clinics, correct?

21 A. Correct.

22 MR. WEINBERGER: Objection.

23 BY MS. SWIFT:

24 Q. It goes on to say that "11 Tactical
25 Diversion Squads from across the United States

1 provided assistance," and that there were 340
2 undercover buys from more than 48 clinics and 64
3 doctors, correct?

4 MR. WEINBERGER: Objection.

5 THE WITNESS: Correct.

6 BY MS. SWIFT:

7 Q. Then if you look at the next slide,
8 Slide 48, still talking about Operation Pill Nation,
9 the DEA's operation in Florida, it says that there
10 were 21 search warrants executed at clinics,
11 residences, and other locations in South Florida,
12 and 25 people arrested on various federal and state
13 drug and money laundering charges, of which five
14 were medical doctors and five were pain clinic
15 owners.

16 Is that consistent with your understanding
17 of Operation Pill Nation?

18 MR. WEINBERGER: Objection.

19 THE WITNESS: Yes.

20 BY MS. SWIFT:

21 Q. None of those people who were arrested
22 were Walgreens pharmacists, right, Ms. Ashley?

23 MR. SOBOTKIN: Objection, outside the
24 scope of the Touhy.

25 MS. SWIFT: Are you going to instruct her

1 not to answer the question?

2 MR. SOBOTKIN: I'm going to instruct her
3 not to answer the question.

4 BY MS. SWIFT:

5 Q. Turn, if you would, please, Ms. Ashley, to
6 your envelope in the original box you were looking
7 through earlier today. This time I want you to grab
8 Envelope W.

9 MS. SWIFT: This will be Exhibit 12 [sic].
10 (Defendant Exhibit 17 was marked
11 for identification.)

12 THE WITNESS: I have it.

13 BY MS. SWIFT:

14 Q. Exhibit 12 is a statement from Susan
15 Langston, the diversion program manager at the DEA's
16 Miami Field Division Office, before the Controlled
17 Substance Standards Committee of the Florida Board
18 of Pharmacy and the Florida Department of Health for
19 a Public Meeting Concerning Issues with Patients
20 Filling Prescriptions for Controlled Substances in
21 August of 2015, correct?

22 A. Yes.

23 Q. Have you seen this document before?

24 A. Have I seen this document? I don't
25 recall.

1 Q. Okay. Take a look at the first page of
2 Ms. Langston's statement from the DEA to the Florida
3 Board of Pharmacy, if you would, please.

4 A. Yes.

5 Q. In the fourth paragraph, Ms. Langston
6 states the DEA's goal is "to do our part to make
7 sure all legitimate pain patients receive whatever
8 medications they need."

9 Do you agree with that statement based on
10 your career at DEA?

11 MR. WEINBERGER: Objection, improper
12 redirect, beyond the scope of cross.

13 THE WITNESS: I'm sorry, would you repeat
14 the question, please?

15 BY MS. SWIFT:

16 Q. Ms. Langston says in the fourth paragraph
17 the DEA's goal is "to do our part to make sure all
18 legitimate pain patients receive whatever
19 medications they need."

20 Do you agree with that statement based on
21 your career at the DEA?

22 MR. WEINBERGER: Objection, same reasons.

23 THE WITNESS: If -- yes.

24 BY MS. SWIFT:

25 Q. At the bottom of that page, Ms. Langston

1 says, at the beginning of the last paragraph, that
2 "2010 to 2011 was the peak of Florida's
3 pharmaceutical drug abuse epidemic."

4 Is that true, based on your experience at
5 DEA?

6 MR. WEINBERGER: Objection.

7 THE WITNESS: It was the peak of -- I'm
8 sorry, I'm trying to find where you're reading
9 from.

10 BY MS. SWIFT:

11 Q. The very last paragraph on the first page,
12 "2010 to 2011 was the peak of Florida's
13 pharmaceutical drug abuse epidemic."

14 A. I don't know that.

15 Q. Okay. In that same paragraph, she goes on
16 to say, "at that time, most of the narcotic pain
17 pills prescribed by those pain pill [sic] physicians
18 were dispensed directly from the pain clinics and
19 the involvement of a separate retail pharmacy was
20 not necessary."

21 Is that true, based on your experience at
22 DEA?

23 MR. WEINBERGER: Objection.

24 THE WITNESS: Yeah, yes, it is.
25

1 BY MS. SWIFT:

2 Q. In the next paragraph, Ms. Langston says
3 on behalf of DEA that "In 2011, the State of Florida
4 adopted legislation known as the Anti-Pill Mill Bill
5 that restricted doctors from selling actual pills
6 from these pain clinics."

7 Is that true, based on your experience at
8 DEA?

9 MR. WEINBERGER: Objection.

10 THE WITNESS: Yeah, some of this is just
11 not a "yes" or "no" answer, but yeah.

12 BY MS. SWIFT:

13 Q. She goes on to say, "This new law shifted
14 the dispensing of most narcotic painkillers to
15 actual pharmacies. This shift heightened
16 pharmacists' responsibilities and they were suddenly
17 faced with circumstances many had never dealt with
18 before."

19 Is that true, based on your own experience
20 at DEA?

21 MR. WEINBERGER: Objection.

22 THE WITNESS: You're saying based on my
23 experience, is it true that this happened in
24 Florida?
25

1 BY MS. SWIFT:

2 Q. Yes.

3 A. I'm just trying to understand the
4 question.

5 Q. I'm just asking, I mean, if you understand
6 that statement to be true.

7 MR. SOBOTKIN: I'm going to object as
8 that, I don't think, fits within one of the
9 authorized topics on the Touhy.

10 MS. SWIFT: Well, it's a DEA statement,
11 public statement about dispensing-related
12 issues. It's, I think, well within the scope
13 of the Touhy on those grounds, particularly
14 given the leeway that plaintiffs have been
15 given to ask about settlements and
16 investigations --

17 MR. WEINBERGER: Objection.

18 MS. SWIFT: -- in Florida.

19 MR. WEINBERGER: Objection.

20 MR. SOBOTKIN: So, I'm sorry, could you
21 repeat the question?

22 MS. SWIFT: Sure.

23 BY MS. SWIFT:

24 Q. Ms. Langston says to the Florida Board of
25 Pharmacy in this statement that the shift in the

1 Florida law -- "The new law shifted the dispensing
2 of most narcotic painkillers to actual pharmacies.
3 This shift heightened pharmacists' responsibilities,
4 and they were suddenly faced with circumstances many
5 never had dealt with before."

6 And my only question is whether you know
7 that to be true.

8 MR. WEINBERGER: Objection.

9 MR. SOBOTKIN: You can answer.

10 THE WITNESS: Yeah, yes, I think that the
11 legislation did change things, yes.

12 BY MS. SWIFT:

13 Q. Okay. Take a look at Page 3 of
14 Ms. Langston's DEA statement, please.

15 In the second paragraph, the last
16 statement, which starts "if a pharmacist
17 encounters," do you see that?

18 A. Yes. Oh, I'm looking at --

19 Q. I just want to make sure you're at the
20 same spot I am.

21 A. Page 3, which paragraph?

22 Q. Second paragraph, last sentence.

23 A. "If a pharmacist encounters," yes.

24 Q. Ms. Langston says on behalf of DEA to the
25 Florida Board of Pharmacy, "If a pharmacist

1 encounters a red flag, then asking a question of the
2 patient, calling the doctor's office, combined with
3 using common sense, will often offer a reasonable
4 explanation to clear that red flag."

5 Do you agree with that?

6 MR. WEINBERGER: Objection.

7 THE WITNESS: I agree with that.

8 BY MS. SWIFT:

9 Q. It goes on to say, in the very next
10 paragraph, "We recognize that the vast majority of
11 controlled substance prescriptions are written by
12 highly trained and ethical medical professionals who
13 are treating legitimate medical conditions."

14 Do you agree with that?

15 A. I agree with that.

16 Q. She goes on, "We also recognize that the
17 vast majority of controlled substance prescriptions
18 written by doctors are for legitimate medical
19 purposes and are issued in the usual course of
20 professional practice. A great deal of the time a
21 red flag at a pharmacy can easily be explained and
22 once it is resolved there should be no problem
23 filling that prescription."

24 Do you agree with that?

25 MR. WEINBERGER: Objection.

1 THE WITNESS: Yeah, I agree with that.

2 BY MS. SWIFT:

3 Q. Then towards the bottom of that same
4 page -- actually, in the next paragraph, the
5 paragraph starting "although we asked pharmacists."

6 Do you see that?

7 A. "Although we asked pharmacists," yes, I
8 see that.

9 Q. Ms. Langston says, on behalf of DEA,
10 "Although we asked pharmacists to be on the lookout
11 for suspicious activities that may indicate drug
12 abuse and diversion, we are not asking pharmacists
13 to be medical doctors."

14 Do you agree with that?

15 MR. WEINBERGER: Objection.

16 THE WITNESS: I agree with that.

17 BY MS. SWIFT:

18 Q. It says, "We are not asking pharmacists to
19 review medical records, MRI reports, x-rays, or to
20 diagnose patients. We simply want pharmacists to be
21 aware there is an epidemic of pharmaceutical drug
22 abuse in this country and to use their education,
23 experience, professional judgment, ethics, and
24 common sense to not knowingly participate in this
25 national health crisis."

1 Do you agree with all of that?

2 MR. WEINBERGER: Objection.

3 THE WITNESS: Yes.

4 BY MS. SWIFT:

5 Q. Ms. Ashley, do you have any personal
6 knowledge of the dispensing systems used by
7 Walgreens, CVS, Walmart, Rite Aid, or Giant Eagle
8 pharmacies?

9 A. Do you mean their platform for
10 prescriptions?

11 Q. Yes.

12 A. No.

13 Q. Do you have any personal knowledge about
14 what those pharmacies do with the dispensing data
15 that exists in those systems?

16 A. Generally, but no. I mean, in general,
17 for DEA purposes, I do. The storage part of it, you
18 mean?

19 Q. Well, what general knowledge do you have
20 about what pharmacies do with the data they have in
21 their systems?

22 A. Oh, the only general knowledge I have is
23 that they store it and have it available for DEA
24 when we need it.

25 Q. And they can provide records to DEA upon

1 request? Is that what you're getting at?

2 A. Yes.

3 Q. Do you have any other personal knowledge
4 about what pharmacies do with the dispensing data in
5 their systems?

6 A. I don't.

7 Q. You've already testified that there is no
8 federal requirement that pharmacies conduct data
9 analysis before filling a prescription for a
10 controlled substance, right?

11 MR. SOBOTKIN: Objection. I believe that
12 misconstrues the testimony, which I recall was
13 related to whether there was a federal
14 regulation on that issue rather than a
15 requirement.

16 MS. SWIFT: I believe I asked it both
17 ways, but she can correct me if I'm wrong.

18 THE WITNESS: I don't recall if you asked
19 it both ways, but I do recall that I said I'm
20 not aware of a federal regulation that requires
21 it.

22 BY MS. SWIFT:

23 Q. Are you aware of any other federal
24 requirement?

25 A. A federal requirement, no. I'd call it an

1 expectation.

2 Q. Well, is the expectation that the DEA put
3 in its published guidance, the pharmacist manual
4 that we looked at earlier today, is the expectation
5 that the pharmacist is going to exercise
6 professional judgment in determining whether to fill
7 a prescription for a controlled substance?

8 A. Yes.

9 MR. WEINBERGER: Objection.

10 BY MS. SWIFT:

11 Q. Do you have any personal knowledge about
12 Walgreens' policies, procedures, or training
13 materials for pharmacists?

14 A. Today, as I sit here, I don't recall. I
15 may have, yeah. Over my career, it's likely.

16 Q. But you can't think of anything today?

17 A. Today, no.

18 Q. What about for the other chain pharmacies,
19 CVS, Rite Aid, Walmart, and Giant Eagle, do you have
20 any personal knowledge about their policies,
21 procedures, or training materials?

22 A. Not today, no.

23 Q. The plaintiff asked you a number of
24 questions about the Ohio Board of Pharmacy's
25 Prescription Drug Monitoring Program, which goes by

1 the acronym OARRS.

2 Do you remember those questions?

3 A. I remember those questions.

4 Q. Before I get to OARRS, Ms. Ashley, do you
5 know what doctor shopping is?

6 A. Yes.

7 Q. What is doctor shopping?

8 MR. WEINBERGER: Objection.

9 MR. SOBOTKIN: Objection. I think the
10 breadth of the question is outside the scope of
11 the Touhy.

12 MS. SWIFT: I'm going to get there.

13 MR. SOBOTKIN: It's foundational.

14 MR. WEINBERGER: This is all -- can I have
15 a continuing objection to this line of
16 questioning, which is all way beyond my
17 cross-examination?

18 MS. SWIFT: We're getting there, Pete.

19 We're getting there. But sure.

20 BY MS. SWIFT:

21 Q. What is doctor shopping, Ms. Ashley?

22 A. When an individual doctor-shops, they're
23 going from doctor to doctor attempting to obtain
24 whatever controlled substance they're, you know,
25 seeking to obtain, yeah.

1 Q. Is doctor shopping a form of diversion, in
2 your experience?

3 A. Yes, it is.

4 Q. Is doctor shopping a crime, at least in
5 some states?

6 MR. SOBOTKIN: Objection, calls for a
7 legal conclusion.

8 BY MS. SWIFT:

9 Q. If you know. Let me -- I'll withdraw the
10 question and ask it a different way.

11 Is it your understanding, based on your
12 experience at DEA, that doctor shopping is a crime?

13 A. Only if it's for the purpose of obtaining
14 a drug illegally, yes, that is a crime.

15 Q. Should a pharmacist be on the lookout for
16 doctor shopping when they fill prescriptions for
17 opioids?

18 A. Should pharmacists be on the lookout?

19 Sure. In exercising judgment, yeah, sure.

20 Q. Okay. I'm going to introduce a document
21 that is not in your box because I didn't know I was
22 going to need it until the plaintiffs' lawyer asked
23 you questions.

24 MR. WEINBERGER: You think that's -- you
25 think that's okay? So, like, you have, you

1 know, 50 documents that I don't get to see
2 before your direct examination, and I have to
3 anticipate what you're going to ask and provide
4 you with documents. And now you're saying
5 because I asked a question, you get to
6 introduce a document that I haven't seen?

7 MS. SWIFT: That's what the remote
8 deposition protocol says, yes.

9 MR. WEINBERGER: Yeah, well, I don't think
10 so. I don't think so.

11 So I'll object to any questions on this
12 new document.

13 MS. SWIFT: This is going to be
14 Exhibit 18, Ms. Ashley, and I'll show it to you
15 on the screen. I apologize you don't have it
16 in front of you.

17 MR. WEINBERGER: Have you emailed it to
18 me? Have you emailed it to me or provided me a
19 copy of it?

20 MS. SWIFT: I just marked it as an exhibit
21 in the Exhibit Share.

22 MR. WEINBERGER: No, no, no, you're not
23 answering my question. Why is that --

24 MS. SWIFT: I just provided it to you via
25 the Exhibit Share. Do you need me to --

1 MR. WEINBERGER: I'm not on the
2 Exhibit Share.

3 MS. SWIFT: Well, that's the way everybody
4 has been -- you know, Pete, for you, I'll send
5 you an email.

6 MR. WEINBERGER: So, you know, I harken
7 back to a couple of the Ohio Board of Pharmacy
8 depositions where you interposed this exact
9 objection, that we hadn't provided you with a
10 document in advance, and you objected to our
11 being able to use a document.

12 Do you remember that?

13 MS. SWIFT: I don't, actually. You know,
14 I'm sure you'll point it out to me.

15 MR. WEINBERGER: Oh, I will. I will, at
16 some point.

17 MS. SWIFT: I don't really think it's --

18 MR. WEINBERGER: I think we all ought to
19 play by the same rules. And I know you think
20 is hilarious. But, you know, you are the
21 strictest of strict enforcer of the rules,
22 and -- but only when it suits you.

23 MS. SWIFT: Always a pleasure, Pete. I'm
24 going to email you at your request.

25 MR. WEINBERGER: I'm not trying to make it

1 pleasurable, believe me.

2 MS. SWIFT: I'm aware of that. I'm trying
3 to be nice.

4 MR. WEINBERGER: Well, I am too. I'm
5 trying to be courteous, just like you -- like
6 you expect, and you're suggesting that you
7 didn't -- you didn't know that you were going
8 to need this document because of something I
9 asked. That's ridiculous.

10 MS. SWIFT: It's actually true. You asked
11 her about OARRS, which is an Ohio Board of
12 Pharmacy system that she testified she didn't
13 know anything about, which is what I would have
14 expected.

15 MR. WEINBERGER: And you used an Ohio
16 Board of Pharmacy exhibit in questioning her.

17 MS. SWIFT: All right. I just emailed you
18 the document. It's Exhibit 18.

19 MR. WEINBERGER: I don't have it.

20 MS. FITZPATRICK: Kate, could you please
21 send that to all of the plaintiffs' counsel?

22 MS. SWIFT: Sure, give me one second,
23 Laura.

24 BY MS. SWIFT:

25 Q. And, Ms. Ashley, I've got it showing on

1 the screen. Let me know if you can see it.

2 MR. WEINBERGER: Wait for a minute, until
3 I have a chance to look through the document.
4 Do you mind?

5 MS. SWIFT: We can go off the record if
6 you want to take the time to look at the
7 document. That's fine.

8 MR. WEINBERGER: No, this is -- this is a
9 delay because of what you're doing, not because
10 of anything that I'm doing, so I'm --

11 MS. SWIFT: We're going to go off the
12 record if you're going to take time to look at
13 the document, Pete.

14 MR. WEINBERGER: I'm printing it up. I'm
15 going to look at the document. You can go off
16 the record all you want. I'm telling you, it's
17 going to go against your time. And if we need
18 to get Special Master Cohen on the phone, we
19 will do that.

20 MS. SWIFT: Can we go off the record,
21 please, and we're not going to count this
22 against our time.

23 THE VIDEOGRAPHER: Going off the record at
24 1:14.

25

1 (Whereupon, a recess was taken
2 from 1:14 p.m. to 1:22 p.m.)

3 THE VIDEOGRAPHER: On the record, 1:22.

4 BY MS. SWIFT:

5 Q. Ms. Ashley, can you see the OARRS
6 PowerPoint that I marked as Exhibit 18 in front of
7 you on the screen?

8 A. Yes, I do.

9 Q. All right. I'm just going to ask you
10 about one page of it, which is Page 11.

11 Do you see that in front of you? You can
12 see it's got a Board of Pharmacy Bates number at the
13 bottom right-hand corner ending 3269.

14 A. It doesn't show the full document. I
15 can't see that, but I can see up to the point where
16 it says "Doctor Shoppers."

17 Q. Okay. Let me see if I can make it so you
18 can see the whole thing.

19 Can you see the whole thing now?

20 A. Not totally, but I can see the top of it,
21 the Bates number, but anyway --

22 Q. You can see enough.

23 A. -- in the border, I can see it, yes.

24 Q. Okay. Great. Is it big enough for you to
25 read it?

1 A. Yes, it is.

2 Q. Okay. Great. I'd like to direct your
3 attention to -- there are a number of bullets on
4 this slide, and this is not -- okay. I'm sorry. I
5 was on the wrong slide.

6 The slide that I wanted to focus you on is
7 actually on Page 12 with the Bates
8 Number BOP_MDL543270.

9 Do you see that?

10 A. I do.

11 Q. Okay. And it says -- the first bullet
12 says, "'Doctor Shopping' is criminally cited as
13 'deception to obtain a dangerous drug.'"

14 And I believe you testified earlier that
15 you know that, at least in some states, doctor
16 shopping can be a crime; is that fair?

17 A. Yes.

18 MR. WEINBERGER: Objection, continuing
19 line -- continuing objection to this line of
20 questioning.

21 BY MS. SWIFT:

22 Q. The second bullet says, "A patient may be
23 guilty of 'doctor shopping' by receiving
24 prescriptions by as few as two prescribers; however,
25 a patient receiving prescriptions from many

1 prescribers may not be guilty of 'doctor shopping,'
2 depending on the manner in which the prescriptions
3 were obtained."

4 Do you agree with that statement?

5 MR. WEINBERGER: Objection.

6 THE WITNESS: Patient -- yes.

7 BY MS. SWIFT:

8 Q. The next bullet reads, "There is no way to
9 determine if a patient is guilty of 'doctor
10 shopping' using OARRS data."

11 Did you know, during your time at the DEA,
12 that State Board of Pharmacies like the one in Ohio
13 had concluded that there is no way to determine if a
14 patient is guilty of doctor shopping using their
15 State PDMP data?

16 MR. WEINBERGER: Objection.

17 THE WITNESS: Did I know that they
18 determined that? No, I did not know that.

19 BY MS. SWIFT:

20 Q. The bullet goes on to read, "However,
21 there is a growing trend nationwide to treat 'any
22 patient receiving a prescription from five
23 prescribers and five pharmacies in a one-month
24 period' as a doctor shopper for the purposes of
25 tracking trends."

1 Was that a trend that you were aware of?

2 A. This specific one, I don't recall.

3 Q. Do you know whether there are other signs
4 of diversion that may be impossible to determine
5 from data like the prescription data in the OARRS
6 prescription monitoring program?

7 MR. WEINBERGER: Objection.

8 THE WITNESS: I know that it may be
9 impossible to determine if a patient -- I'm
10 sorry, what's the question?

11 BY MS. SWIFT:

12 Q. Let me ask it a slightly different way.

13 This document shows the Ohio Board of
14 Pharmacy stating that it's impossible to determine
15 if a patient is guilty of doctor shopping using
16 OARRS data.

17 My question for you is if you know if
18 there are other signs of diversion that may be
19 impossible to determine from data in state
20 prescription monitoring programs.

21 MR. WEINBERGER: Objection.

22 THE WITNESS: I agree with that statement.

23 BY MS. SWIFT:

24 Q. Okay. You can set that one aside.

25 Ms. Ashley, are you a medical doctor?

1 A. I am not.

2 Q. Are you an epidemiologist?

3 A. I am not.

4 Q. Do you have any training in epidemiology?

5 A. I do not.

6 Q. Have you ever conducted a study to
7 determine the likelihood that somebody who takes a
8 prescription opioid will turn to heroin or other
9 illicit drugs?

10 A. If I conducted a study for that purpose?
11 No, I have not.

12 Q. Are you aware of whether the DEA has ever
13 conducted such a study?

14 A. To determine, I am not aware of that.

15 Q. Would you agree that most people who take
16 prescription opioids pursuant to a doctor's
17 prescription never use heroin?

18 MR. WEINBERGER: Objection.

19 THE WITNESS: Yeah, I would agree with
20 that.

21 BY MS. SWIFT:

22 Q. All right. Turn back to the very first
23 exhibit that I marked with you this morning,
24 Exhibit 1. And I think this one, actually, is your
25 PowerPoint.

1 A. At the Summit, yes. I have it.

2 Q. And turn to Page 10 with me, if you would,
3 please.

4 A. I have it.

5 Q. Is it your view that the most frequent
6 method of obtaining pharmaceuticals for nonmedical
7 use is from family and friends out of the medicine
8 cabinet?

9 A. I'd have to say it was my view at the
10 time. I'm not certain it's true today.

11 Q. Do you have a different view today, or do
12 you just not know?

13 A. Well, I'm -- I'm thinking of all of the
14 awareness out there that their parents or whoever
15 may not be maintaining their controlled substances
16 in the medicine cabinet. So things could have
17 changed due to the awareness as of today.

18 Q. Got it.

19 So if I understand your testimony, it may
20 be the case that what I've referred to as "medicine
21 cabinet diversion" has decreased because of
22 awareness of the issue?

23 A. That's what I'm saying.

24 MR. WEINBERGER: Objection.

25

1 BY MS. SWIFT:

2 Q. And do you mean by that that people may be
3 locking up their medicine cabinets today or properly
4 disposing of unused medications?

5 MR. WEINBERGER: Objection.

6 THE WITNESS: Yes, that's what I'm saying.

7 BY MS. SWIFT:

8 Q. Would that include disposal of medications
9 at drop boxes, at places like Walgreens and other
10 places that have medication disposal drop boxes?

11 MR. WEINBERGER: Objection.

12 THE WITNESS: Yes, it includes that.

13 BY MS. SWIFT:

14 Q. Take a look with me, if you would, please,
15 at Plaintiffs' Exhibit 4, which is the corresponding
16 responsibility regulation from DEA.

17 Do you see that?

18 A. I know I have it in one of these.

19 Q. It's one of the DEA website printouts, if
20 that helps.

21 A. Yes, I know it's in one of these. Let me
22 find it in a second.

23 MR. SOBOTKIN: Just to confirm, it bears
24 Bates number P-GEN-00174?

25 MS. SWIFT: Yes.

1 MR. SOBOTKIN: Thank you.

2 THE WITNESS: Oh, that's -- it's mixed in
3 here. I know I have it.

4 You don't know the folder number, do you?

5 BY MS. SWIFT:

6 Q. It's P-GEN-00174.

7 A. I have it.

8 Q. Great.

9 The Corresponding Responsibility
10 Regulation that's 1306.04(a), correct?

11 A. Yes.

12 Q. The regulation states that "The
13 responsibility for the proper prescribing and
14 dispensing of controlled substances is upon the
15 prescribing practitioner."

16 That's the first half of that sentence,
17 correct?

18 A. Correct.

19 Q. It goes on to say, "But a corresponding
20 responsibility rests with the pharmacist who fills
21 with prescription."

22 Correct?

23 A. Correct.

24 Q. It says that -- it goes on to say, "An
25 order purporting to be a prescription issued not in

1 the usual course of professional treatment or in
2 legitimate and authorized research is not a
3 prescription within the meaning and intent of
4 Section 309 of the Act."

5 Correct?

6 A. Correct.

7 Q. And then it goes on to say, "The person
8 knowingly filling such a purported prescription,"
9 meaning an illegitimate prescription, "as well as
10 the person issuing it, shall be subject to the
11 penalties provided for violations of the provisions
12 of the law relating to controlled substances."

13 Correct?

14 A. Yes, that's correct.

15 Q. Would you agree with me that the
16 Corresponding Responsibility Regulation has an
17 explicit knowledge requirement with respect to the
18 filling of an illegitimate prescription?

19 MR. WEINBERGER: Objection.

20 BY MS. SWIFT:

21 Q. It says the person knowingly doing that is
22 subject to penalties.

23 Do you agree with that?

24 MR. WEINBERGER: Objection.

25 THE WITNESS: Yeah, there has to be

1 knowledge, yes.

2 BY MS. SWIFT:

3 Q. Ms. Ashley, you testified -- do you want
4 to take a minute?

5 A. I think she ran out.

6 Q. If you need to take --

7 A. Someone rang the doorbell, so, yeah. Go
8 ahead.

9 Q. I have to leave the house to deal with
10 that.

11 A. Yeah.

12 Q. Ms. Ashley, you testified earlier when the
13 plaintiffs' lawyer was asking questions that a
14 pharmacist is a professional.

15 Did I hear that correctly?

16 A. Yes.

17 Q. Do you understand that pharmacists have to
18 go to school for six years to get a Pharm.D.?

19 A. Yes.

20 Q. Do you understand that pharmacists have to
21 profess -- have to pass a professional licensing
22 exam before they can practice pharmacy?

23 A. Yes.

24 Q. Do you understand that pharmacists have to
25 be licensed in their state to practice pharmacy?

1 A. Yes.

2 Q. And we've already discussed today that DEA
3 says pharmacists have to exercise their professional
4 judgment in filling prescriptions for controlled
5 substances; is that correct?

6 A. That's correct.

7 Q. The pharmacy that employs a pharmacist
8 can't tell that pharmacist whether or not to fill a
9 prescription; that's within the pharmacist's own
10 professional judgment.

11 Would you agree with that?

12 MR. WEINBERGER: Objection, beyond the
13 scope.

14 THE WITNESS: No, I don't think I do.

15 Tell me --

16 BY MS. SWIFT:

17 Q. Let me ask it again.

18 I believe you've already testified a
19 number of times that it's up to the pharmacist in
20 her professional judgment to decide whether or not
21 to fill a prescription for controlled substances.

22 Do I have that part right?

23 A. Yes.

24 Q. Would you agree, then, that the pharmacy
25 that employs the pharmacist can't tell her whether

1 she should fill a particular prescription or not?

2 A. No, sure, they can.

3 Q. Is it your testimony that a pharmacist can
4 tell -- strike that.

5 Is it your testimony that a pharmacy could
6 tell a pharmacist "You have to fill this
7 prescription," even if that pharmacist determined
8 that the prescription was illegitimate in her
9 professional judgment?

10 A. Could the pharmacy, let's say, supervisor
11 or someone tell them to fill it? Sure, they could.

12 Q. Is it your testimony that it would not
13 violate the pharmacist's professional obligations to
14 fill a prescription that she believed was
15 illegitimate --

16 MR. WEINBERGER: Objection.

17 BY MS. SWIFT:

18 Q. -- just because her boss told her to do
19 it?

20 A. Yes, it is a violation, but yes.

21 Q. Okay. So I think maybe we're speaking
22 past each other.

23 A. Okay.

24 Q. My question is, if the pharmacist
25 determines, in her professional judgment under her

1 license to practice pharmacy, that she should or
2 shouldn't fill a prescription, that rests on her,
3 and her license is on the line if she doesn't follow
4 that professional judgment.

5 Would you agree with that?

6 A. Her license is on the line if she does not
7 follow that professional judgment, correct.

8 Q. So would you agree with me, it would be
9 inappropriate for the pharmacy that employs her,
10 whether a supervisor or anybody else, to infringe
11 upon that professional judgment?

12 MR. WEINBERGER: Objection.

13 THE WITNESS: I agree, that would be
14 inappropriate, correct.

15 BY MS. SWIFT:

16 Q. All right. We've talked about pharmacists
17 and the fact that they are professionals.

18 Do you agree with me that doctors are also
19 professionals?

20 A. Yes, I agree.

21 Q. Doctors go to medical school for a number
22 of years. They have to do a residency and sometimes
23 an internship as well?

24 A. Yes.

25 MR. WEINBERGER: Continuing objection.

1 This is all way beyond the scope of
2 cross-examination.

3 BY MS. SWIFT:

4 Q. Doctors also have to be licensed before
5 they can practice medicine and prescribe medications
6 in their state, correct?

7 A. That is correct.

8 Q. Only a licensed prescriber is allowed to
9 write a prescription for an opioid medication,
10 correct?

11 A. That is correct.

12 MR. WEINBERGER: Objection.

13 THE WITNESS: Legally.

14 BY MS. SWIFT:

15 Q. A pharmacist can't write a prescription
16 for an opioid, correct?

17 A. I'm going to say, I think in some states,
18 they can. But I'll just say I'm not sure.

19 Q. In your experience, does the pharmacist
20 typically examine the patient?

21 A. Pharmacist, no.

22 Q. Pharmacists don't typically practice
23 medicine.

24 Would you agree with that?

25 A. I agree.

1 Q. All right. One more document for you,
2 Ms. Ashley.

3 Turn back to Exhibit 13, which is the
4 stakeholders' consensus document on red flags.

5 A. I have it.

6 Q. We talked about this exhibit before.

7 Would you agree with me that this
8 document -- this Stakeholders' Challenges and Red
9 Flag Warning Signs, related to prescribing and
10 dispensing of controlled substances, would you agree
11 with me that this document shows pharmacies working
12 together with other organizations and the DEA and
13 others to try to find consensus on red flags that
14 potentially identify signs of diversion?

15 A. I agree with you.

16 Q. Would you agree with me that pharmacies
17 generally try to work with the DEA to ensure that
18 they have --

19 A. I'm sorry, can you give me one minute?

20 Q. I'll withdraw the question.

21 THE VIDEOGRAPHER: Off the record. 1:38.

22 (Whereupon, a recess was taken
23 from 1:38 p.m. to 1:38 p.m.)

24 THE VIDEOGRAPHER: On the record, 1:38.

25

1 BY MS. SWIFT:

2 Q. Would you agree with me, Ms. Ashley, that
3 pharmacies generally try to work with the DEA to
4 ensure that they have effective controls to prevent
5 diversion?

6 MR. SOBOTKIN: Objection.

7 THE WITNESS: I agree with that.

8 BY MS. SWIFT:

9 Q. Would you agree with me that pharmacies
10 generally try to work with the DEA to ensure that
11 they are complying with the law?

12 A. I agree with that.

13 Q. In your experience, do pharmacies try
14 their best to prevent the diversion of prescription
15 opioids?

16 MR. WEINBERGER: Objection.

17 MR. SOBOTKIN: Objection.

18 THE WITNESS: In general, yes.

19 MS. SWIFT: I do not have any further
20 questions right now.

21 I would like to make a standing objection
22 to our inability to ask the questions that I
23 tried to ask about the investigations and
24 settlements that plaintiffs have been permitted
25 to ask about. But that's it for me right now.

1 I believe we have other defendants who may
2 want to ask Ms. Ashley some questions.

3 MR. WEINBERGER: You mean after you did
4 redirect, you're suggesting that other defense
5 counsel can ask questions? This is -- you
6 know, depositions are supposed to take place as
7 if they are at trial, as if we are at trial.
8 So the order is certainly not in accordance
9 with that.

10 I have additional questions to ask.

11 Who else -- who else is going to ask
12 questions?

13 MR. BUSH: I'm going to ask a couple
14 questions.

15 MR. WEINBERGER: All right. Well, do you
16 want to go first, or do you want me to go
17 first?

18 MR. BUSH: No, no, I'll go first. Mine
19 will be real brief.

20 EXAMINATION

21 BY MR. BUSH:

22 Q. Ms. Ashley, are you there? I don't see
23 you now.

24 A. You don't? The video is on.

25 Q. There you are, there you are. Okay.

1 My name is Graham Bush, and I represent
2 CVS or the CVS entities in the lawsuits that your
3 deposition is being taken in, and I have, like,
4 probably two minutes' worth of questions, if that.

5 As I understand it, you were -- this goes
6 back to your background.

7 You were in the Chicago field office
8 between 2007 and 2015; is that right?

9 A. That's correct.

10 Q. And in the Chicago field office, you were
11 responsible for matters that occurred in a
12 five-state area; is that right?

13 A. That's correct.

14 Q. And what was the five-state area?

15 A. Illinois, Indiana, Wisconsin, Minnesota --
16 I'm missing one. What am I missing?

17 Q. North Dakota?

18 A. North Dakota, yes.

19 Q. And would it be accurate to say that you
20 didn't have any responsibility while you were in the
21 Chicago field office for matters outside of that
22 five-state area?

23 A. That's correct.

24 Q. And that would include for enforcement
25 matters?

1 A. That's correct.

2 Q. And investigatory matters?

3 A. That's correct.

4 Q. And I think sometime in 2015, you moved to
5 headquarters.

6 What -- do you remember exactly when you
7 moved to headquarters in 2015?

8 A. September 2015.

9 MR. BUSH: All right. Thanks. I don't
10 have anything further. I told you it wasn't
11 going to take long.

12 FURTHER EXAMINATION

13 BY MR. WEINBERGER:

14 Q. Ms. Ashley, a couple of follow-up
15 questions after Ms. Swift's redirect.

16 Exhibit 13, which is the stakeholders'
17 document which you -- which we referenced before, it
18 includes a list of entities, including CVS and
19 Walgreens and Rite Aid, and it includes a company by
20 the name of Purdue Pharma.

21 Do you know who Purdue -- do you know the
22 company Purdue Pharma?

23 A. I know them.

24 MR. SOBOTKIN: Objection, outside of the
25 scope of the Touhy authorization.

1 BY MR. WEINBERGER:

2 Q. You do know them?

3 A. I'm aware of the company, yes.

4 Q. And are you aware of the recent conviction
5 of Purdue for mail fraud, misrepresentation of facts
6 associated with their drug Oxycontin and bribing
7 doctors?

8 MR. SOBOTKIN: Objection, it's outside of
9 the scope of the Touhy. I'm directing the
10 witness not to answer.

11 BY MR. WEINBERGER:

12 Q. But your recollection is that
13 Purdue Pharma was one of the stakeholders back
14 whenever this meeting took place, right? Right?

15 A. Yes. Yes, sir.

16 Q. Now, this OARRS document that Ms. Swift
17 asked you about, she didn't ask you to look at the
18 second page of the document. So I don't know what
19 number she -- we assigned to it, but, okay.

20 The second page, it talks about OARRS
21 basics. And I know you're not particularly familiar
22 with OARRS, but it talks about the authorized users
23 of OARRS as "Pharmacists - for current patients for
24 the purpose of practicing pharmacy."

25 Do you see that?

1 A. Yes.

2 Q. So if this is -- if pharmacists are
3 authorized users to look at this database and use
4 the database and its algorithms, isn't it logical to
5 assume that the purpose of this PDMP is to help
6 pharmacists look for and sort out and investigate
7 red flags?

8 MR. SOBOTKIN: Objection.

9 THE WITNESS: I agree with that.

10 BY MR. WEINBERGER:

11 Q. And I know you're not a pharmacist, and
12 you told us that pharmacists goes -- or you have
13 confirmed what Ms. Swift asked you, that pharmacists
14 go to school for six years.

15 Based upon your experience at the DEA, do
16 you think it's logical to assume that these
17 professional pharmacists, during their education,
18 get trained on red flags with respect to opioid
19 prescriptions?

20 MR. SOBOTKIN: Objection.

21 MR. BUSH: Objection.

22 UNIDENTIFIED SPEAKER: Objection.

23 THE WITNESS: It's logical to assume that.

24 BY MR. WEINBERGER:

25 Q. And then, finally, you were asked by

1 Ms. Swift to go back to the Exhibit 10, our
2 Exhibit 10, Plaintiffs' Exhibit 10, which is the
3 press release from the Department of Justice
4 regarding the Walgreens settlement.

5 And she said, well, isn't it true,
6 Ms. Ashley, that this was limited to their conduct
7 in Florida?

8 Well, you know, once again, let's take a
9 look at the entire document and see if what she
10 asked you about is actually correct.

11 The very first paragraph, the second --
12 the very last sentence in the first paragraph says,
13 "The settlement further resolves open civil
14 investigations in the District of Colorado, the
15 Eastern District of Michigan, and the Eastern
16 District of New York, as well as civil
17 investigations by DEA field offices nationwide,
18 pursuant to the Controlled Substances Act."

19 Have I read that correctly?

20 A. Yes.

21 MS. SWIFT: Objection to the extent it
22 mischaracterizes all of the evidence in the
23 case and also to the extent that plaintiffs
24 continue to be allowed to ask questions that I
25 was not allowed to ask.

1 MR. WEINBERGER: Well, it would be helpful
2 if you would ask questions that have an
3 accurate factual predicate.

4 MS. SWIFT: Objection to the colloquy of
5 plaintiffs' counsel.

6 BY MR. WEINBERGER:

7 Q. Okay. Well, so I've read that correctly,
8 correct?

9 MS. SWIFT: Same objection.

10 THE WITNESS: Yes, you read that
11 correctly.

12 BY MR. WEINBERGER:

13 Q. Now, with respect to the Walgreens
14 settlement document -- and I'm not going to go into
15 the details -- is it relatively standard that these
16 settlement documents attach to the documents orders
17 to show cause that begin the investigation, just as
18 a matter of process?

19 MS. SWIFT: Objection, outside the scope.

20 MR. SOBOTKIN: Objection, it's outside the
21 scope of the Touhy authorization, and I'm going
22 to direct the witness not to answer.

23 BY MR. WEINBERGER:

24 Q. Okay. So of your own personal knowledge,
25 without going into any facts about the

1 investigation, isn't it true that the investigation
2 had a geographic scope with respect to Walgreens
3 that was far beyond Florida?

4 MS. SWIFT: Objection, mischaracterizes
5 the evidence. Outside the scope.

6 MR. SOBOTKIN: Objection. It's outside
7 the scope of the Touhy authorization. I'm
8 going to direct the witness not to answer.

9 MR. WEINBERGER: Ms. Ashley, you've been
10 extremely patient and cooperative, and we
11 appreciate that very much.

12 And I don't have any further questions.

13 MS. SWIFT: I apologize, Ms. Ashley, I've
14 got to ask a couple more.

15 FURTHER EXAMINATION

16 BY MS. SWIFT:

17 Q. Sticking with Exhibit 10, I don't think
18 this will take very long.

19 If you would turn to Page 2 of Exhibit 10,
20 which is the same press release about the Walgreens
21 settlement and investigation that I've been very
22 limited in being able to ask you questions about
23 today.

24 MR. SOBOTKIN: Would you mind pausing just
25 for a second. I lost my document. Can you

1 tell me which folder that was?

2 MS. SWIFT: Yes, it's P-GEN-224.

3 MR. SOBOTKIN: 224, thanks. Just bear
4 with me one second.

5 And as an alternative, I could suggest if
6 you want to just display it, I could follow
7 along on the screen instead of you waiting for
8 me to find it.

9 MS. SWIFT: It's okay. Take your time.
10 It's not a big deal, David. Take your time.
11 I've only got a few questions.

12 MR. SOBOTKIN: 224?

13 MS. SWIFT: Yes.

14 MR. SOBOTKIN: Thanks.

15 MS. SWIFT: And I'm on Page 2.

16 BY MS. SWIFT:

17 Q. Ms. Ashley, do you see the first full
18 paragraph on Page 2 of Exhibit 10?

19 A. Page 2, first paragraph, yes, I do.

20 Q. It says, "The settlement agreement covers
21 conduct that was the subject of DEA's administrative
22 actions and the U.S. Attorney's Office civil penalty
23 investigation."

24 Do you see that?

25 A. I do.

1 Q. "More specifically, the settlement covers
2 allegations against Walgreens Jupiter Distribution
3 Center and six Walgreens retail pharmacies."

4 Correct?

5 A. That's what it says, yes.

6 Q. It doesn't say anything about any other
7 pharmacies or any other distribution center anywhere
8 in America, correct?

9 MR. SOBOTKIN: Objection. Is the question
10 as to those two sentences?

11 MS. SWIFT: It's as to the document.

12 BY MS. SWIFT:

13 Q. But I'll ask you to read the rest of the
14 paragraph and tell me if you agree that it doesn't
15 say anything about any other distribution center or
16 any other pharmacies anywhere in the United States.

17 A. Do you want me to read it aloud?

18 Q. No, that's okay.

19 A. Okay. It doesn't mention it -- anything
20 national in this paragraph, correct.

21 Q. All right. Then if you'd take a look at
22 the paragraph towards the bottom of the page that
23 starts "since 2009," do you see that?

24 A. Yes.

25 Q. It says, "Since 2009, the DEA, along with

1 its federal, state, and local counterparts, have
2 partnered to combat the prescription drug abuse
3 epidemic that has plagued Florida, culminating in
4 Operation Pill Nation," that we -- and that's what
5 we spoke about earlier today, right, Ms. Ashley?

6 A. Yes.

7 Q. It says, "These investigations have
8 resulted in charges against more than 172
9 individuals, including 51 doctors and 24
10 clinic/pharmacy owners."

11 Do you see that?

12 A. I do.

13 Q. It says that "The investigations have
14 resulted in the seizure of approximately 2.5 million
15 dosage units of controlled substances, approximately
16 \$16.6 million, real property and exotic cars."

17 Do you see that?

18 A. I do.

19 Q. It says that "Approximately 42 doctors
20 have lost their DEA registrations through the
21 issuance of immediate suspension orders."

22 Do you see that?

23 A. I do.

24 Q. "As well, approximately 192 doctors and 68
25 pharmacies have voluntarily surrendered their DEA

1 registrations following an official visit from the
2 DEA."

3 Do you see that?

4 A. I do.

5 Q. Would you agree with me that Operation
6 Pill Mill Nation, the goal of that was to target the
7 most serious pill mill and rogue pain clinics that
8 were in existence in America at that time?

9 MR. WEINBERGER: Objection.

10 MR. SOBOTKIN: Objection. I'm going to
11 direct the witness to not answer to the extent
12 it requires her to rely on nonpublic
13 information.

14 To the extent she can rely on public
15 information, she can answer.

16 THE WITNESS: My response would rely on
17 nonpublic information.

18 BY MS. SWIFT:

19 Q. Would you agree with me that DEA's efforts
20 through Operation Pill Mill Nation curtailed
21 diversion by many, many rogue pain clinics and pill
22 mills in Florida?

23 MR. WEINBERGER: Objection.

24 THE WITNESS: I agree with that.

25 MS. SWIFT: I don't have any other

1 questions.

2 MR. WEINBERGER: Nothing further,
3 Ms. Ashley. Have a great rest of the day.
4 Thank you so much.

5 THE WITNESS: Thank you. Bye.

6 MS. SWIFT: Thank you, ma'am.

7 THE VIDEOGRAPHER: Off the record, 1:52.
8 (Whereupon, the deposition was
9 concluded at 1:52 p.m.)

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C E R T I F I C A T E

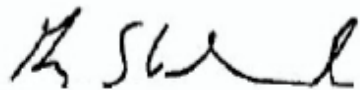
The within and foregoing deposition of the witness, DEMETRA ASHLEY, conducted via Zoom, was taken before GREG S. WEILAND, CSR, RMR, CRR, in the City of Chicago, Cook County, Illinois, commencing at 8:11 o'clock a.m. Central Standard Time, on the 11th day of March, 2021.

The said witness was first duly sworn and was then examined upon oral interrogatories; the questions and answers were taken down in shorthand by the undersigned, acting as stenographer; and the within and foregoing is a true, accurate and complete record of all the questions asked of and answers made by the aforementioned witness at the time and place hereinabove referred to.

The signature of the witness was not waived and the deposition was submitted to the deponent as per copy of the attached letter.

The undersigned is not interested in the within case, nor of kin or counsel to any of the parties.

Witness my signature on this 15th day of



GREG S. WEILAND, CSR, RMR, CRR
License No. 084-003472

Veritext Legal Solutions
1100 Superior Ave
Suite 1820
Cleveland, Ohio 44114
Phone: 216-523-1313

March 16, 2021

To: MR. SOBOTKIN

Case Name: National Prescription Opiate Litigation - Track 3 v.

Veritext Reference Number: 4486738

Witness: Demetra Ashley Deposition Date: 3/11/2021

Dear Sir/Madam:

Enclosed please find a deposition transcript. Please have the witness review the transcript and note any changes or corrections on the included errata sheet, indicating the page, line number, change, and the reason for the change. Have the witness' signature notarized and forward the completed page(s) back to us at the Production address shown above, or email to production-midwest@veritext.com.

If the errata is not returned within thirty days of your receipt of this letter, the reading and signing will be deemed waived.

Sincerely,
Production Department

NO NOTARY REQUIRED IN CA

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DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4486738
CASE NAME: National Prescription Opiate Litigation - Track 3 v.
DATE OF DEPOSITION: 3/11/2021
WITNESS' NAME: Demetra Ashley

In accordance with the Rules of Civil
Procedure, I have read the entire transcript of
my testimony or it has been read to me.
I have made no changes to the testimony
as transcribed by the court reporter.

Date Demetra Ashley
Sworn to and subscribed before me, a
Notary Public in and for the State and County,
the referenced witness did personally appear
and acknowledge that:

They have read the transcript;
They signed the foregoing Sworn
Statement; and
Their execution of this Statement is of
their free act and deed.

I have affixed my name and official seal
this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

DEPOSITION REVIEW
CERTIFICATION OF WITNESS

ASSIGNMENT REFERENCE NO: 4486738

CASE NAME: National Prescription Opiate Litigation - Track 3 v.

DATE OF DEPOSITION: 3/11/2021

WITNESS' NAME: Demetra Ashley

In accordance with the Rules of Civil Procedure, I have read the entire transcript of my testimony or it has been read to me.

I have listed my changes on the attached Errata Sheet, listing page and line numbers as well as the reason(s) for the change(s).

I request that these changes be entered as part of the record of my testimony.

I have executed the Errata Sheet, as well as this Certificate, and request and authorize that both be appended to the transcript of my testimony and be incorporated therein.

Date

Demetra Ashley

Sworn to and subscribed before me, a Notary Public in and for the State and County, the referenced witness did personally appear and acknowledge that:

They have read the transcript;

They have listed all of their corrections in the appended Errata Sheet;

They signed the foregoing Sworn Statement; and

Their execution of this Statement is of their free act and deed.

I have affixed my name and official seal this _____ day of _____, 20____.

Notary Public

Commission Expiration Date

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ERRATA SHEET
VERITEXT LEGAL SOLUTIONS MIDWEST
ASSIGNMENT NO: 4486738

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Date Demetra Ashley
SUBSCRIBED AND SWORN TO BEFORE ME THIS _____
DAY OF _____, 20_____.

Notary Public

Commission Expiration Date

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[ashley - based]

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Federal Rules of Civil Procedure

Rule 30

(e) Review By the Witness; Changes.

(1) Review; Statement of Changes. On request by the deponent or a party before the deposition is completed, the deponent must be allowed 30 days after being notified by the officer that the transcript or recording is available in which:

(A) to review the transcript or recording; and

(B) if there are changes in form or substance, to sign a statement listing the changes and the reasons for making them.

(2) Changes Indicated in the Officer's Certificate. The officer must note in the certificate prescribed by Rule 30(f)(1) whether a review was requested and, if so, must attach any changes the deponent makes during the 30-day period.

DISCLAIMER: THE FOREGOING FEDERAL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY.

THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE FEDERAL RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

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